SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 584

THE UNITED STATES OF AMERICA, PETITIONER

vs.

SECURITY TRUST AND SAVINGS BANK OF SAN DIEGO, EXECUTOR, ETC., ET AL.

No. 585

THE UNITED STATES OF AMERICA, PETITIONER

vs.

SECURITY TRUST AND SAVINGS BANK OF SAN DIEGO, EXECUTOR, ETC., ET AL.

No. 586

THE UNITED STATES OF AMERICA, PETITIONER

vs.

SECURITY TRUST AND SAVINGS BANK OF SAN DIEGO, EXECUTOR, ETC., ET AL.

No. 587

THE UNITED STATES OF AMERICA, PETITIONER

vs.

SECURITY TRUST AND SAVINGS BANK OF SAN DIEGO, EXECUTOR, ETC., ET AL.

ON PETITION FOR WRITS OF CERTIORARI TO THE DISTRICT COURT OF APPEAL, FOURTH APPELLATE DISTRICT, STATE OF CALIFORNIA

874873—50——1

INDEX

	Original	Print
Proceedings in Supreme Court of California	3	1
Agreed statement on appeal from Superior Court of San Diego County	3	1
Exhibit 1—Motion for new trial and notice of motion in case No. 140598	8	5
Exhibit 2—Notice of appeal in case No. 140598	10	6
Exhibit 3—Notice of appeal in case No. 144895	11	7
Exhibit 4—Notice of appeal in case No. 144932	12	8
Exhibit 5—Notice of appeal in case No. 145955	13	9
Exhibit 6—Order consolidating causes for purposes of appeal, etc	14	10
Clerk's certificate [omitted in printing]	15	10
Supplemental agreed statement on appeal	17	11
Judgment of Superior Court in case No. 140598	19	11
Judgment of Superior Court in case No. 144895	22	13
Judgment of Superior Court in case No. 144932	28	18
Judgment of Superior Court in case No. 145955	34	22
Order transferring appeals to District Court of Appeal, Fourth Appellate District of California	40	27
Order denying hearing after judgment by District Court of Appeal	41	27
Proceedings in District Court of Appeal, Fourth Appellate District of California	42	28
Opinion, Mussell, J	42	28
Stipulation and order re substitution of party defendant	51	34
Stipulation and order re substitution of party defendant	53	35
Stipulation and order re substitution of party defendant	55	36
Stipulation and order re substitution of party defendant	57	37
Order substituting party defendant-respondent	59	39
Stipulation to recall remittitur and to stay enforcement of judgment	61	39
Order recalling remittiturs and staying execution and enforcement of judgment	63	41
Clerk's certificate [omitted in printing]	64	41
Orders allowing certiorari		42

3 In the Supreme Court of California

L. A. Misc. No. 106

UNITED STATES OF AMERICA, APPELLANT

v.

WILTON M. MORRISON, RESPONDENT

ALBERTA WINTHER AND MARGARET G. YOUNG, PLAINTIFFS

v.

GEORGE STYLIANO, WILTON M. MORRISON, UNITED STATES OF AMERICA, ET AL., DEFENDANTS

San Diego Superior Court No. 140598

ROBERT M. REWICK AND MARY ELIZABETH REWICK, HUSBAND AND WIFE, PLAINTIFFS

v.

GEORGE STYLIANO, WILTON M. MORRISON, UNITED STATES OF AMERICA, ET AL., DEFENDANTS

San Diego Superior Court No. 144895

ROBERT M. DEWITT AND JESSIE R. DEWITT, HUSBAND AND WIFE AS JOINT TENANTS, PLAINTIFFS

v.

GEORGE STYLIANO, WILTON M. MORRISON, THE UNITED STATES OF AMERICA, ET AL., DEFENDANTS

San Diego Superior Court No. 144932

4 RAY C. CAVELL AND MYRLE M. CAVELL, HUSBAND AND WIFE, PLAINTIFFS

v.

GEORGE STYLIANO, WILTON M. MORRISON, UNITED STATES OF AMERICA, ET AL., DEFENDANTS

San Diego Superior Court No. 145955

Agreed statement on appeal

JURISDICTIONAL STATEMENT

The following actions were filed in the Superior Court of the State of California, in and for the County of San Diego, under the case numbers and names as follows:

	Case name	Court number
1.	Alberta Winther and Margaret G. Young, Plaintiffs, v. George Styliano, Genell Styliano, Wilton M. Morrison, United States of America, et al	140598
2.	Robert M. Rewick and Mary E. Rewick, Plaintiffs, v. George Styliano, Genell Styliano, Wilton M. Morrison, United States of America, et al	144895
3.	Robert M. DeWitt and Jessie R. DeWitt, Plaintiffs, v. George Styliano, Genell Styliano, Wilton M. Morrison, United States of America, et al	144932
4.	Ray C. Cayell and Myrle M. Cavell, Plaintiffs, v. George Styliano, Genell Styliano, Wilton M. Morrison, United States of America, et al	145955

On June 14th and 15th, 1948, the above matters were tried before the Honorable Arthur L. Mundo, Judge Presiding. The Court gave an oral opinion that Judgment would be entered for plaintiffs in accordance with prayer and that any surplus remaining after the satisfaction of the claims of the plaintiffs in each case should be applied, first, to the claims of Wilton M. Morrison, appellee herein, and second, after the satisfaction of the claims of the appellee, to the claims of the United States.

5 On July 2, 1948, the United States of America filed its Motion for a New Trial in each of the matters. On July 13, 1948, the Motion for a new trial was denied in each action. A copy of one of the Motions for a New Trial, together with Points and Authorities, which were identical as filed in each case, is attached hereto marked Exhibit 1, which said exhibit is incorporated herein as though here set forth in full.

On July 27, 1948, a Notice of Appeal to the Supreme Court of the State of California was filed in each of the above entitled actions, true copies of which are attached hereto marked Exhibits 2, 3, 4, and 5, and are incorporated herein as though here set forth in full.

This Court has previously ordered the consolidation of these cases on appeal to permit the hearing of all these matters as one appeal and has extended the time for filing this Agreed Statement to and including January 15, 1959. (See Exhibit 6.)

STATEMENT OF FACTS

The action of Winther v. Morrison, et al., was an action to quiet title to certain property described in the complaint. A surplus fund remained concerning which the defendant Morrison, the defendant United States of America, and others, made claims as parties entitled to such surplus funds. In the cases of Rewick v. Styliano, et al., DeWitt v. Styliano, et al., and Cavell v. Styliano, et al., the proceedings were for foreclosure of purchase-money trust deeds as mortgages.

The Court ordered the property to be foreclosed, to be sold, and the surplus funds derived at such sale to be awarded to the parties in accordance with their priorities. No question is raised as to the correctness of the judgment of the lower court as to the claims of the plaintiffs in any of the four actions.

The Court ordered that the defendant Morrison was entitled to take such surplus funds in each of the four cases until the defendant Morrison's claims were satisfied, the balance remaining, if any, after the satisfaction of the claims of the defendant Morrison, was to be applied to the claims of the defendant United States of America and after the defendant United States of America's claims were satisfied, then the balance was to be applied to the claims of other defendants appearing. The United States of America claimed and now claims that its liens are entitled to payment before those of the defendant Morrison.

On October 17, 1946, the defendant Wilton M. Morrison caused to be levied in accordance with law, an attachment on all of the real property concerned in the actions; that attachment was issued in the action entitled Wilton M. Morrison, Plaintiff, v. George S. and Genell Styliano, husband and wife, defendants in case No. 136148, Superior Court of the State of California, in and for the County of San Diego. A judgment was rendered in said action on April 24, 1947, in favor of Wilton M. Morrison against the said defendants in the sum of $78,938.55. Upon the 2nd day of May, 1947, an abstract of said judgment was recorded in the office of the County Recorder, San Diego County.

On December 3, 1946, December 5, 1946, December 10, 1946, and January 22, 1948, notices of tax liens were filed in the office of the County Recorder, San Diego County, California, on behalf of the Collector of Internal Revenue of Los Angeles, California. The respective taxes for which notices of lien were filed on the dates as aforesaid, were assessed by the Commissioner of Internal Revenue and said assessments were received in the office of the Collector of Internal Revenue; notice and demand was made for

the payment of said taxes, but the same were not paid, and such notices of lien were filed in accordance with law.

The lower court held that the priority of the defendants Morrison and United States of America was to be determined by the attachment date of their liens against the real property described and held, in effect, that the defendant Morrison on October 17, 1946, acquired by his attachment a lien which would take precedence over the liens of the United States filed subsequent to the attachment of the defendant Morrison, but prior to the date that the defendant Morrison obtained judgment, to wit, April 24, 1947.

7

There remains in the possession of the Clerk of the Superior Court certain funds in each of the above entitled cases to which the claims of the defendants named herein are to attach under the order of the court appealed from herein.

Statement of Question

The question, therefore, presented to the Court is whether an attachment lien on real property is to be held prior in right to a federal tax lien attaching to the real property subsequent to the date of the attachment lien and prior to the date that the attaching creditor obtains judgment.

Dated: January 13, 1949.

Respectfully submitted.

James M. Carter,
United States Attorney,

E H. Mitchell,
George M. Bryant,
Leila F. Bulgrin,
Assistant United States Attorneys,

Eugene Harpole,
R. Scott,
J. D. Pettus,
Special Attorneys,
Bureau of Internal Revenue.

By George M. Bryant,
George M. Bryant,
Attorneys for Appellant,
United States of America.

(Illegible)
Attorney for Appellee.

8 [File endorsement omitted.]

Exhibit 1 to agreed statement

In the Superior Court of the State of California in and for the County of San Diego

No. 140598

ALBERTA WINTHER AND MARGARET G. YOUNG, PLAINTIFFS

vs.

WILTON M. MORRISON, GEORGE STYLIANO, GENELL STYLIANO, HORACE G. BAILEY AND UNITED STATES OF AMERICA, DEFENDANTS

Motion for new trial and notice of motion

Filed July 2, 1948

Comes now the United States of America, by and through its counsel and representatives, and moves the Court that a new trial be granted in the above entitled matter, insofar as the rights and priorities of the defendant Morrison and the United States of America are concerned.

Said Motion is based upon all of the evidence and records of the Court in this Cause and that the oral opinion of the Court rendered previously herein concerning the rights of the defendants Morrison and the United States of America is contrary to the law and to the evidence.

Dated: June 18, 1948.

Respectfully submitted.

JAMES M. CARTER,
United States Attorney.

E. H. MITCHELL,
GEORGE M. BRYANT,
Assitant United States Attorneys.

EUGENE HARPOLE,
Special Attorney,
Bureau of Internal Revenue.

By (S) E. H. MITCHELL,
Attorneys for United States of America.

9 POINTS AND AUTHORITIES

1. SEC. 3670. Property subject to lien.

"If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, pen-

alty, additional amount, or additon to such tax, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person. 53 Stat. 448."

2. SEC. 3671. Period of lien.

"Unless another date is specifically fixed by law, the lien shall arise at the time the assessment list was received by the Collector, and shall continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time. 53 Stat. 449."

3. SEC. 3672. Validity against mortgages, pledgees, purchasers, and judgment creditors.

"(a) Invalidity of lien without notice.—Such lien shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice thereof has been filed by the Collector.

"(1) Under State or Territorial laws.—In accordance with the law of the State or Territory in which the property subject to the lien is situated, whenever the State or Territory has by law provided for the filing of such notice; or"

An attaching creditor is not a judgment creditor within the meaning of Sec. 3672. Miller v. Bank of America, 166 F. (2d) 415 (C. C. A. 9, 2-19-1948); MacKenzie v. United States of America, 109 F. (2d) 540.

10 [File endorsement omitted.]

Exhibit 2 to agreed statement

In the Superior Court of the State of California in and for the County of San Diego

No. 140598

ALBERTA WINTHER AND MARGARET G. YOUNG, PLAINTIFFS

v.

WILTON M. MORRISON, GEORGE STYLIANO, UNITED STATES OF AMERICA, ET AL., DEFENDANTS

Notice of appeal of United States of America

Filed July 27, 1948

To the defendant WILTON M. MORRISON and his attorneys Monroe & McInnis:

You, and each of you, will please take notice that the defendant United States of America appeals to the Supreme Court of the State of California from that portion of the judgment of the above

entitled court rendered in favor of the defendant Wilton M. Morrison and as against the defendant United States of America and entered on the 6th day of July 1948, in Book 140, Page 1, Judgment Records of the above entitled court, and from the order made by the Court on July 12, 1948, denying defendant United States of America's motion for a new trial.

Dated: July 22, 1948.

JAMES M. CARTER,
United States Attorney,

E. H. MITCHELL,
GEORGE M. BRYANT,
Assistant United States Attorneys,

EUGENE HARPOLE,
Special Attorney,
Bureau of Internal Revenue.

By George M. Bryant,
GEORGE M. BRYANT,
Attorneys for United States of America.

11 [File endorsement omitted.]

Exhibit 3 to agreed statement

In the Superior Court of the State of California in and for the County of San Diego

No. 144895

ROBERT M. REWICK AND MARY ELIZABETH REWICK, HUSBAND AND WIFE, PLAINTIFFS

v.

GEORGE STYLIANO, WILTON M. MORRISON, UNITED STATES OF AMERICA, ET AL., DEFENDANTS

Notice of appeal of United States of America

Filed July 27, 1948

To the defendant WILTON M. MORRISON and his attorneys Monroe & McInnis:

You, and each of you, will please take notice that the defendant United States of America appeals to the Supreme Court of the State of California from that portion of the oral judgment of the above entitled court rendered in favor of the defendant Wilton M. Morrison and as against the defendant United States of America,

and from the order made by the Court on July 12, 1948, denying defendant United States of America's motion for a new trial.

Dated: July 22, 1948.

JAMES M. CARTER,
United States Attorney,

E. H. MITCHELL,
GEORGE M. BRYANT,
Assistant United States Attorneys,

EUGENE HARPOLE,
Special Attorney,
Bureau of Internal Revenue.

By George M. Bryant,
GEORGE M. BRYANT,
Attorneys for United States of America.

12 [File endorsement omitted.]

Exhibit 4 to agreed statement

In the Superior Court of the State of California in and for the County of San Diego

No. 144932

ROBERT M. DEWITT AND JESSIE R. DEWITT, HUSBAND AND WIFE AS JOINT TENANTS, PLAINTIFFS

v.

GEORGE STYLIANO, WILTON M. MORRISON, THE UNITED STATES OF AMERICA, ET AL., DEFENDANTS

Notice of appeal of United States of America

Filed July 27, 1948

To the defendant WILTON M. MORRISON and his attorneys Monroe & McInnis:

You, and each of you, will please take notice that the defendant United States of America appeals to the Supreme Court of the State of California from that portion of the judgment of the above entitled court rendered in favor of the defendant Wilton M. Morrison and as against the defendant United States of America and entered on the 6th day of July, 1948, in Book 140, Page 6, Judgment Records of the above entitled court, and from the order made by the Court on July 12, 1948, denying defendant United States of America's motion for a new trial.

Dated: July 22, 1948.

JAMES M. CARTER,
United States Attorney,
E. H. MITCHELL,
GEORGE M. BRYANT,
Assistant United States Attorneys,
EUGENE HARPOLE,
Special Attorney,
Bureau of Internal Revenue.
By George M. Bryant,
GEORGE M. BRYANT,
Attorneys for United States of America.

13 [Filed endorsement omitted.]

Exhibit 5 to agreed statement

In the Superior Court of the State of California in and for the County of San Diego

No. 145955

RAY C. CAVELL AND MYRLE M. CAVELL, HUSBAND AND WIFE, PLAINTIFFS

V.

GEORGE STYLIANO, WILTON M. MORRISON, UNITED STATES OF AMERICA, ET AL., DEFENDANTS

Notice of appeal of United States of America

Filed July 27, 1948

To the defendant WILTON M. MORRISON and his attorneys Monroe & McInnis:

You, and each of you, will please take notice that the defendant United States of America appeals to the Supreme Court of the State of California from that portion of the oral judgment of the above entitled court rendered in favor of the defendant Wilton M. Morrison and as against the defendant United States of America, and from the order made by the Court on July 12, 1948, denying defendant United States of America's motion for a new trial.

Dated: July 28, 1948.

JAMES M. CARTER,
United States Attorney,
E. H. MITCHELL,
GEORGE M. BRYANT,
Assistant United States Attorneys,
EUGENE HARPOLE,
Special Attorney,
Bureau of Internal Revenue.
By George M. Bryant,
GEORGE M. BRYANT,
Attorneys for United States of America.

14 *Exhibit 6 to agreed statement*

In the Supreme Court of the State of California in Bank

L. A. Misc. No. 106

WINTHER v. MORRISON
REWICK v. STYLIANO
DEWITT v. STYLIANO
CAVELL v. STYLIANO

Order

Filed Jan. 11, 1949

Pursuant to stipulation on file, it is ordered that the above entitled causes may be consolidated for purposes of appeal and may be presented on an agreed statement of facts to be filed on or before January 15, 1949.

Dated: January 10, 1949.

[File endorsement omitted.]

15 [Clerk's certificate to foregoing papers omitted in printing.]

17 In the Supreme Court of California

L. A. Misc. No. 106

[Titles omitted.]

18 *Supplemental agreed statement on appeal*

There is attached hereto copies of the judgment in each of the four cases referred to in the "Agreed Statement on Appeal." These judgments are to be a supplement to, and a part of, said agreed statement on appeal.

Dated: January 19, 1949.

JAMES M. CARTER,
United States Attorney,

E. H. MITCHELL,
GEORGE M. BRYANT,
Assistant United States Attorney,

EUGENE HARPOLE,
Special Attorney,
Bureau of Internal Revenue.

By GEORGE M. BRYANT,
Attorneys for Appellant.

MONROE & MCGINNIS,

By J. W. MCGINNIS,
Attorneys for Respondent.

19 [File endorsement omitted.]

In the Superior Court of the State of California in and for the County of San Diego

No. 140598

ALBERTA WINTHER AND MARGARET G. YOUNG, PLAINTIFFS

vs.

WILTON M. MORRISON, GEORGE STYLIANO, GENELL STYLIANO, HORACE G. BAILEY, AND UNITED STATES OF AMERICA, DEFENDANTS

Judgment

Filed July 6, 1948

The above-entitled cause came on regularly for trial on the 20th day of October 1947 and thereafter was from time to time regularly continued for further trial; the plaintiffs appearing by Gray, Cary, Ames & Driscoll by J. G. Driscoll, Jr., Esq.; the defendant Wilton M. Morrison appearing by Renwick Thompson and Monroe & McInnis; the defendant Horace G. Bailey appearing by his attorneys Whelan & Whelan by Vincent Whelan, Esq.; the defendant United States of America, appearing by James M. Carter,

United States Attorney, E. H. Mitchell and George M. Bryant, Assistant United States Attorneys, Eugene Harpole and Loren P. Oakes, Special Attorneys, Bureau of Internal Revenue, by George M. Bryant, Esq.; the defendants George Styliano and Genell Styliano appearing neither in person nor by attorney, and their defaults were duly and regularly entered herein; and evi-
20 dence, both oral and documentary, having been introduced, and the Court having heard argument of counsel, and cause having been submitted to the Court for its decision, and the Court having heretofore made and entered its findings of fact and conclusions of law,

Now, therefore, it is ordered, adjudged, and decreed, as follows, to wit:

I

That the plaintiffs are the owners and entitled to the possession of the following-described real property, to wit:

"Lot 8, in Block 4 of Marlborough Heights, in the City of Chula Vista, County of San Diego, State of California, according to Map thereof No. 1336, filed in the office of the County Recorder of San Diego County, May 25, 1911;"

II

That none of the defendants have any right, title, or interest in or to said real property or any part thereof, and each of said defendants is hereby forever enjoined from asserting any claim whatsoever in or to said real property or any part thereof adverse to the plaintiffs herein.

III

That the Clerk of this Court be and he is hereby orderd and directed to deliver to plaintiffs the bill of sale and deed now in the custody of this Court.

IV

That the Clerk of this Court be and he is hereby ordered and directed from the fund of fifteen hundred dollars ($1,500.00) now on deposit in this Court in this action to pay to plaintiffs the sum of one hundred ninety dollars ($190.00), representing the cost of a policy of title insurance upon the real property hereinabove described, together with plaintiff's costs taxed in the sum of $21.25.

21 V

That the defendant, Wilton M. Morrison, has a valid and subsisting lien upon the balance of said fund after payment of the amounts described in the preceding paragraph of this judgment; that said lien is adjudged to be superior and paramount to

any lien, claim, title, right, or interest of the other defendants herein; that the Clerk of this Court be and he is hereby ordered and directed to pay said balance to said defendant, Wilton M. Morrison.

VI

That the defendant, United States of America, has a lien upon the balance of said fund, but that said lien is subject and subordinate to the lien of the defendant, Wilton M. Morrison, but superior and paramount to any claim, right, title, or interest of any other defendant herein.

VII

That the right, title, and interest of the defendant, Horace G. Bailey, in or to the balance of said fund is subject and subordinate to the prior liens of the defendant, Wilton M. Morrion, and the defendant, United States of America.

VIII

That the defendants, George Styliano and Genell Styliano, have no right, title, or interest in or to said balance of said fund.

Done in open court this 6th day of July 1948.

(S) ARTHUR L. MUNDO, *Judge.*

22 [File endorsement omitted.]

In the Superior Court of the State of California in and for the County of San Diego

No. 144895

ROBERT M. REWICK AND MARY ELIZABETH REWICK, HUSBAND AND WIFE, PLAINTIFFS

vs.

GEORGE STYLIANO AND GENELL STYLIANO, HUSBAND AND WIFE, UNION TITLE INSURANCE AND TRUST COMPANY, A CORPORATION AS TRUSTEE, WILTON M. MORRISON, UNITED STATES OF AMERICA, STATE OF CALIFORNIA, JOHN DOE AS RECEIVER IN BANKRUPTCY OF RICHARD DOE, A BANKRUPT PERSON, JOHN DOE, JANE DOE, SUSAN GRAB, AND MARY KEEP, DEFENDANTS

Decree of foreclosure

Filed August 23, 1948

The above entitled action came on regularly for trial on July 12, 1948, before the Court sitting without a jury, upon plaintiffs' amended complaint on file herein and the respective answers of

the defendants, Wilton M. Morrison, United States of America and State of California thereto, plaintiffs appearing in person and by Messrs. Luce, Forward, Lee & Kunzel, their attorneys, the defendant Wilton M. Morrison appearing by his attorney Renwick Thompson and Messrs. Monroe and McInnis, the defendant United States of America appearing by James M. Carter, Esquire, U. S. Attorney, by George M. Bryant, Assistant U. S. Attorney, and the defendant State of California appearing by Fred W. Howser, Attorney General of the State of California, by
23 George M. Bryant, the said amended complaint taken as confessed by the defendants George Styliano, Genell Styliano and Union Title Insurance and Trust Company, a corporation as trustee, and it having been proven that the said defendants George Styliano and Genell Styliano and Union Title Insurance and Trust Company, a corporation as trustee, have been each duly and legally served with summons herein and summoned to answer plaintiffs' amended complaint and that said defendants and each of them have made default in that behalf and that the default of said defendants and each of them for not appearing and answering herein has been duly and legally entered by the Clerk of this Court and evidence oral and documentary having been introduced by the respective parties appearing herein, and the cause having been argued by respective counsel and the Court being fully advised in the premises and having made and caused to be filed its written findings of fact and conclusions of law;

Now, therefore, by reason of the law and the findings aforesaid,

It is hereby ordered, adjudged, and decreed that the defendants George Styliano and Genell Styliano executed the promissory note and trust deed referred to in said complaint and as therein alleged and that the said defendants George Styliano and Genell Styliano have defaulted in the payment of said promissory note and broken the conditions of said trust deed and that said promissory note is still unpaid and that plaintiffs are entitled to have the said trust deed enforced and foreclosed as a mortgage and the land therein described sold as hereinafter ordered and that plaintiffs are entitled to this judgment and to the relief by it granted;.

It is further hereby ordered, adjudged, and decreed that there is now due and payable from said defendants George Styliano and Genell Styliano to said plaintiffs on the promissory note set out in the amended complaint as and for principal the sum of $7,724.92, with interest from January 1, 1947 at the rate of 6% per annum, and that there is also unpaid, due and payable from said de-
24 fendants to said plaintiffs the sum of $843.00 which is hereby fixed and allowed to said plaintiffs as a reasonable

attorneys' fee herein and for the sum of $24.45, costs of this action, and for the sum of $44.00, being the amount paid for the expense of securing evidence of title, and for the further sum of $160.64 as premium paid by plaintiffs on account of insurance policies, and the further sum of $3,000.00 advanced and paid by plaintiffs on account of payment required to be made under terms of a prior trust deed (being $2,850.00 plus $150.00 paid August 1, 1948, since the date of trial of this action), and that all of said sums amounting in the aggregate to $12,561.79 together with interest thereon from date hereof at the rate of seven per cent (7%) per annum, are secured by said trust deed and the lien thereof, and that said defendants George Styliano and Genell Styliano are liable for the said aggregate sum and the interest thereon as aforesaid, but that plaintiffs are entitled to no deficiency judgment against said defendants or either of them;

It is further hereby ordered, adjudged, and decreed that the said lands and premises hereinbefore referred to and situate in the City of San Diego, County of San Diego, State of California, and described as follows, to wit:

"Lot 5 of Cuesta Loma according to map thereof No. 1910 filed in the office of the County Recorder of said San Diego County, May 11, 1926,"

and all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in any wise appertaining be sold at public auction according to law, for cash in lawful money of the United States by the commissioner herein appointed to make such sale;

It is further hereby ordered, adjudged, and decreed that R. S. Lacy be and he is hereby appointed commissioner to make said sale and the sale of said lands, premises, tenements, hereditaments, and appurtenances under and by virtue of this decree and as provided by law; that before entering upon his duties as such commissioner he execute an undertaking in the sum of $100.00 in the manner and form provided by law with sufficient sureties to be approved by the Judge of this Court, to the effect that he, the said commissioner, will fulfill and perform the duties of his office according to law; that the compensation of said commissioner is hereby fixed at $35.00 and he is hereby directed and ordered to sell the said lands, premises, tenements, hereditaments, and appurtenances as provided by law and to report the sale thereof to the Clerk of this Court and perform all other duties of him required by law;

It is further ordered, adjudged, and decreed that out of the proceeds of said sale said commissioner retain his fees, disbursements, and costs of said sale and pay to the plaintiffs or their attorneys out of such proceeds the aggregate sum of $12,561.79 so found due and owing herein to plaintiffs, with interest at the rate of seven percent (7%) per annum from the date of this decree and which said sums are secured by plaintis' said deed of trust;

It is further ordered, adjudged, and decreed that if no redemption shall be made from the sale of said lands and premises in the manner and within the time provided by law for making such redemption, the commission shall execute a deed to the purchaser or purchasers of the same at the expiration of three months from the delivery of his certificate of sale to such purchaser or purchasers such deed to convey to him, her, it or them, or to his, her or their assigns the said lands and premises and he, she, it, or they shall be entitled to the possession of said premises from and after the delivery of such deed; that after the time from redemption from such sale has expired the said defendants George Stiliano, Genell Styliano, Union Title Insurance and Trust Company, a corporation as Trustee, Wilton M. Morrison, United States of America, and State of California and all persons and corporations claiming or to claim from, through or under them (if no redemption shall be made from said sale) shall be forever barred and foreclosed of all right, title to, interest, estate, and equity of redemption in the said lands, premises, tenements, hereditaments, and appurtenances and that any party to this action may
26 purchase at said sale;

It is further ordered, adjudged, and decreed that the defendant Wilton M. Morrison has a judgment against the said defendants George Styliano and Genell Styliano rendered in this Court on April 25, 1947, in the sum of $78,726.90, an abstract of the same having been recorded May 2, 1947, in Book 2392 at Page 339 of Official Records in the County Recorder's Office of San Diego, California, and that the lien of said judgment is subordinate and inferior to the lien of plaintiff's trust deed but that said judgment lien of said Wilton M. Morrison is superior to the liens of the United States of America and the lien of the State of California herein;

It is further ordered, adjudged, and decreed that the United States of America has liens against the said property herein described and that the total amount of said liens against the interest of Genell Styliano in said property as of June 12, 1948, was and is the sum of $9,666.36 plus interest from June 14, 1948, and that the total amount of the lien of said defendant United

States of America against the interest of the defendant George Styliano and Genell Styliano in said property is the sum of $475.68 plus interest from June 14, 1948:

It is further ordered, adjudged, and decreed that the State of California has a lien in the sum of $721.23, including interest and penalties as of June 14, 1948, which lien is subject and subordinate to the judgment lien of the said Wilton M. Morrison and the respective liens of the United States of America and that the said liens of the United States of America and the State of California and each of the same are subordinate and inferior to the judgment lien of said Wilton M. Morrison:

It is further ordered, adjudged, and decreed that if any surplus shall remain from the sale of the said lands and premises by said Commissioner as aforesaid after the payment in full of the amount herein decreed to be due and owing to plaintiffs, together
27 with their interest and the cost and expenses of sale and the commissioner's fees, that the amount of such surplus remaining shall be first applied in payment of the judgment lien of said Wilton M. Morrison, secondly upon the liens of the United States of America in the event any surplus should remain after payment of the said judgment lien of Wilton M. Morrison with interest thereon, and thirdly, upon the liens of the State of California with interest in event any surplus should remain after payment of the aforesaid sums to plaintiffs and to Wilton M. Morrison and to the United States of America as aforesaid;

It is further ordered, adjudged, and decreed that in the event an appeal is taken from this judgment by either one or more of the defendants Wilton M. Morrison, United States of America, or the State of California that the surplus, if any, remaining from the sale of the property herein described after payment of the sums adjudged to be due to plaintiffs with interest thereon and the costs, fees and expenses of the Commissioner appointed by this Court, be deposited by said Commissioner with the Clerk of this Court, to be held by the Clerk of this Court pending final determination as to the ownership of the same on appeal;

It is further hereby ordered, adjudged, and decreed that this action and the same is hereby dismissed as to the defendants John Doe as receiver in bankruptcy of Richard Roe, a bankrupt person, John Doe as trustee in bankruptcy of Richard Roe, a bankrupt person, John Doe, Jane Doe, Susan Grab, and Mary Kerp.

Done in open Court this 23 day of August 1948.

ARTHUR L. MUNDO,
Judge of the said Superior Court.

In the Superior Court of the State of California in and for the County of San Diego

No. 144932

ROBERT M. DEWITT AND JESSIE R. DEWITT, HUSBAND AND WIFE AS JOINT TENANTS, PLAINTIFF

vs.

GEORGE STYLIANO, ET AL., DEFENDANTS

Decree of foreclosure and order of sale

July 6, 1948

The above entitled cause coming on regularly to be heard before the above entitled Court in Department Three thereof, the Honorable Arthur L. Mundo, Judge presiding, on the 14th day of June, 1948, without a jury, and plaintiffs, Robert M. DeWitt and Jessie R. DeWitt, appearing by their attorneys, Martin and Mahedy, defendant Wilton M. Morrison appearing by his attorneys, Monroe and McInnis and Renwick Thompson, defendant United States of America appearing by its attorney, James M. Carter, United States Attorney, by George M. Bryant, Assistant United States Attorney, and defendant State of California appearing by its attorney, Fred N. Howser, Attorney General of the State of California, by George M. Bryant, and defendants George Styliano, Genell Styliano, Dan Gershon and Union Title Insurance and Trust Company, a corporation, as Trustee under Deed of Trust recorded in Book 2158, page 480, of Official Records, and Union Title Insurance and Trust Company, a corporation, as Trustee under Deed of Trust recorded in Book 2172, page 175 of Official Records, having been duly and regularly served with summons and complaint and amendment to complaint in this action, and having failed to appear and answer within the time prescribed by law, and said defendants having been served with notice of trial of said action and having failed to appear at said trial, either in person or by attorney, and their defaults having been duly and regularly entered by the Court, and evidence, both oral and documentary, having been introduced and the argument of counsel having been heard and considered, and the Court having made and caused to be filed its Findings of Fact and Conclusions of Law.

Now therefore, it is ordered, adjudged, and decreed that plaintiffs have and recover judgment against defendants George Styliano and Genell Styliano in the sum of $18,621.34, with interest thereon at the rate of 5% per annum from October 8, 1947 to ———, 1948, amounting to the sum of $———, for attorney's fees

in the sum of $1,534.12, for costs of title search in the sum of $130.00 and for their costs of suit in the sum of $52.75, making a total of $———; that said sum shall draw interest at the rate of 7% per annum from date hereof until paid; that said sum is secured by the Deed of Trust and Chattel Mortgage mentioned in plaintiffs' complaint and constitutes a lien on the real property and chattels described in said complaint and deed of trust and chattel mortgage and hereinafter more particularly described prior to the or any lien of any and all of the defendants named herein.

It is further ordered, adjudged, and decreed that all and singular the property mentioned in the complaint and hereinafter more particularly described (or so much of said property as may be sufficient to satisfy the amount due the plaintiffs) be sold at public auction in the manner prescribed by law, and that any party to this action may be a purchaser at such sale, that said property be sold by Sherman Lacey, Commissioner hereinafter appointed, in the County in which said property is situated.

It is further ordered, adjudged, and decreed that said sale be made at public auction for cash, and that out of the proceeds of said sale said Commissioner retain his fees, disbursements, and commissions of such sale, and pay to the plaintiffs or their attorneys out of such proceeds their costs in this suit taxed at the sum of $52.75, the sum of $1,534.12 allowed by this Court as attorney's fees, the sum of $48,621.34, with interest thereon at the rate of 5% per annum from the 8th day of October, 1947, until ———, 1948, as found by this Court to be due and owing to said plaintiffs upon the debt and the note evidencing said debt, secured by the Trust Deed and Chattel Mortgage hereby foreclosed, and that said Commissioner take and return to this Court receipts for the amounts so paid, to be presented to this Court together with his return and report of sale, and any surplus moneys which may remain after applying the proceeds of sale as aforesaid shall be returned with his return and report of sale to this Court within ten (10) days after making said sale, said surplus, if any there be, to abide the further order of this Court; and the sum of $——— is hereby fixed and allowed said Sherman Lacey as Commissioner as and for a reasonable compensation for his services as such Commissioner, his said appointment to be and become effective upon his taking oath and the giving by said Commissioner of an undertaking in the sum of $———, with sufficient sureties to be approved by this Court conditioned upon the faithful performance of his duties as such Commissioner according to law.

It is further ordered, adjudged, and decreed that the defendants and all persons claiming from or under them be and they are hereby forever barred and foreclosed of and from all equity of redemption and claim in or to said real property hereinafter de-

scribed and all part thereof, and if no redemption is made by any person or party entitled to redeem within three months after the date of said sale, then said Commissioner shall delivery a deed of said real property to the purchaser or purchasers thereof, and said defendants shall be forever barred and foreclosed of and from all equity of redemption and claim in and to said real property, and if said defendants or any of them, or any person claiming under them or any of them, is in possession of said property and refuse to deliver possession thereof to the purchaser or purchasers at said sale, then a writ of assistance or possession may, without further notice, be issued to compel such delivery of possession to such purchaser or purchasers.

It is further ordered, adjudged, and decreed that Wilton M. Morrison has a lien on said real property hereinafter described by virtue of an attachment levied on the 17th day of October 1946, in that certain action entitled "Wilton M. Morrison, Plaintiff vs. George Styliano and Genell Styliano, husband and wife, Defendants, "case No. 136148, records and files of the above entitled court, and the judgment rendered in said action in favor of Wilton M. Morrison against said George Styliano and Genell Styliano on the 24th day of April 1947, in the sum of $78,938.55, an abstract of which judgment was recorded on the 2nd day of May 1947, in Book 2392, page 339, of Official Records of the County Recorder of San Diego County; that interest on said judgment has accrued at the rate of 7% per annum since said 24th day of April 1947; that said lien is subject and subordinate to the lien of the Trust Deed and Chattel Mortgage of plaintiffs herein; that said lien is prior and superior to the lien of the United States of America, and the lien of the State of California.

It is further ordered, adjudged, and decreed that the United States of America has a lien against the property hereinafter described by virtue of certain tax assessments against defendants Genell Styliano and George Styliano which were filed in the office of the Commissioner of Internal Revenue at Los Angeles on the following dates: November 15, 1946; November 18, 1946; November 25, 1946; and December 9, 1946. That notices of such tax liens were filed in the office of the County Recorder of San Diego County on the following dates: December 3, 1946; December 5, 1946; December 10, 1946, and January 22, 1948. That the total amount of said lien of said United States of America as of June 14, 1948, was and is $10,142.79; that said lien is subject and subordinate to the lien of plaintiffs herein and to the lien of Wilton M. Morrison, hereinbefore mentioned.

It is further ordered, adjudged, and decreed that the State of California has a lien on said real property hereinafter mentioned by reason of certain accrued taxes and penalties in the amount

of $721.23, which lien is subject and subordinate to each of the other liens hereinbefore mentioned.

It is further ordered, adjudged, and decreed that any surplus remaining from the sale of the property hereinafter described after the payment in full of the amount herein adjudged to be due plaintiffs shall be applied first upon the lien of Wilton M. Morrison, secondly upon the lien of the United States of America, in the event any surplus should remain after the satisfaction of said lien of Wilton M. Morrison, and thirdly upon the lien of the State of California, in the event any surplus should remain after the satisfaction of the indebtedness due plaintiffs, the lien of Wilton M. Morrison, and the lien of the United States of America.

It is further ordered, adjudged, and decreed that in the event an appeal is taken by either or any of said defendants last above mentioned from this judgment adjudging the priority of said liens of said defendants, then all surplus remaining from the sale of the property hereinafter described after payment of all sums adjudged to be due plaintiffs be deposited by the Commissioner with this Court as hereinbefore ordered and be paid to said lien claimant or claimants in the order of the priority of such lien or liens as such priority may be finally adjudged.

The lands and chattels directed to be sold by this Decree are situated in the City of Oceanside, County of San Diego,
33 State of California, and bounded and particularly described as follows:

The following described real property, to wit:

"Lot Eight, Block Six, Bryan's Addition to Oceanside, according to Map thereof No. 219, filed in the office of the County Recorder of said San Diego County, March 10, 1887.

"Also Lot Eight, Block Six of Oceanside, according to Map thereof made by C. J. Couts No. 344, filed in the office of the County Recorder of said San Diego County, July 1, 1885."

and the following described chattels, to wit:

"Furniture and furnishings located at DeWitt Hotel, Oceanside, California, situated on the real property hereinbefore described.

INVENTORY—DE WITT HOTEL

30 beds	60 blankets
30 springs	121 sheets
30 mattresses	37 bed spreads
23 chests	32 bed pads
23 mirrors	51 pillows
23 grip stands	103 pillow slips
23 occasional chairs	76 face towels
23 straight chairs	73 bath towels
23 desks	52 small rugs

LOBBY

2 ash stands	2 fire extinguishers
2 bridge lamps	3 large lounge chairs
1 writing desk	3 small lounge chairs
2 davenports	2 grip stands
1 writing desk chair	1 coffee table

MISCELLANEOUS

1 flower basket	8 oil paintings
1 mirror	1 large chair
2 t. plungers	vac. sweeper
1 truck board	vac. sweeper for stairs
1 curtain frame	3 hand sweepers
1 6 ft. ladder	46 drinking glasses
1 2 ft. ladder	23 ash trays
1 lawn mower	6 shower curtains
1 garden hose 50 ft.	25 dresser scarfs
2 bridge lamps	dust pan, broom, mop, etc.

Done in open Court this 6 day of July 1948.

(S) ARTHUR L. MUNDO,
Judge of the Superior Court.

34 In the Superior Court of the State of California in and for the County of San Diego

No. 145955

RAY C. CAVELL AND MYRTLE M. CAVELL, HUSBAND AND WIFE,
PLAINTIFFS

vs.

GEORGE STYLIANO AND GENELL STYLIANO, HUSBAND AND WIFE; UNION TITLE INSURANCE AND TRUST COMPANY, A CORPORATION, AS TRUSTEE; WILTON M. MORRISON; UNITED STATES OF AMERICA; STATE OF CALIFORNIA; JOHN DOE, AS RECEIVER IN BANKRUPTCY OF RICHARD ROE, A BANKRUPT PERSON, JOHN DOE, AS TRUSTEE IN BANKRUPTCY OF RICHARD ROE, A BANKRUPT PERSON, JOHN DOE, AS TRUSTEE IN BANKRUPTCY OF MABY KEEP, A BANKRUPT PERSON, JOHN DOE, JANE DOE, SUSAN GRAB, AND MARY KEEP, DEFENDANTS

Decree of foreclosure

August 23, 1948

The above entitled action came on regularly for trial on July 12, 1948, before the Court sitting without a jury, upon plaintiffs' complaint on file herein and the respective answers of the defend-

ants, Wilton M. Morrison, United States of America and State of California thereto, plaintiffs appearing in person and by Messrs. Luce, Forward, Lee & Kunzel, their attorneys, the defendant Wilton M. Morrison appearing by his attorney Renwick Thompson and Messrs. Monroe and McInnis, the defendant United States of America appearing by James M. Carter, Esquire, U. S. Attorney, by George M. Bryant, Assistant U. S. Attorney,
35 and the defendant State of California, by George M. Bryant, the said complaint taken as confessed by the defendants George Styliano, Genell Styliano and Union Title Insurance and Trust Company, a corporation as trustee, and it having been proven that the said defendants George Styliano and Genell Styliano and Union Title Insurance and Trust Company, a corporation as Trustee, have been each duly and legally served with summons herein and summoned to answer plaintiffs' complaint and that said defendants and each of them have made default in that behalf and that the default of said defendants and each of them for not appearing and answering herein has been duly and legally entered by the Clerk of this Court, and evidence oral and documentary having been introduced by the respective parties appearing herein, and the cause having been argued by respective counsel and the Court being fully advised in the premises and having made and caused to be filed its written findings of fact and conclusions of law:

Now, therefore, by reason of the law and the findings aforesaid,

It is hereby ordered, adjudged and decreed that the defendants George Styliano and Genell Styliano executed the promissory note and trust deed referred to in said complaint and as therein alleged and that the said defendants George Styliano and Genell Styliano have defaulted in the payment of said promissory note and broken the conditions of said trust deed and that said promissory note is still unpaid and that plaintiffs are entitled to have the said trust deed enforced and foreclosed as a mortgage and the land therein described sold as hereinafter ordered and that plaintiffs are entitled to this judgment and to the relief by it granted;

It is further hereby ordered, adjudged, and decreed that there is now due and payable from said defendants George Styliano and Genell Styliano to said plaintiffs on the promissory note set out in the complaint as and for the principal the sum of Nine Thousand Two Hundred Thirty-seven and 66/100 Dollars
36 ($9,237.66), with interest from October 15, 1946 at the rate of six percent (6%) per annum, and that there is also unpaid, due and payable from said defendants to said plaintiffs the sum of Eight Hundred Forty-nine and no/100 Dollars ($849.00) which is hereby fixed and allowed to said plaintiffs as a reasonable

attorneys' fee herein and for the sum of Twenty-seven and 01/100 Dollars ($27.01), costs of this action, and for the sum of Twenty-seven Dollars ($27.00), being the amount paid for the expense of securing evidence of title, and that all of said sums amounting in the aggregate to $11,169.17, together with interest thereon from date hereof at the rate of seven percent (7%) per annum, are secured by said trust deed and the lien thereof, and that said defendants George Styliano and Genell Styliano are liable for the said aggregate sum and the interest thereon as aforesaid, but that plaintiffs are entitled to no deficiency judgment against said defendants or either of them;

It is further hereby ordered, adjudged, and decreed that the said lands and premises hereinbefore referred to and situate in the City of San Diego, County of San Diego, State of California, and described as follows, to wit:

"All of Pueblo Lot 1787 of the Pueblo Lands of San Diego, according to Map of Pueblo Lands of said City of San Diego made by James Pascoe in 1870 excepting the North 860 feet of said Pueblo Lot 1787. Also excepting the Right of Way of the Atchison, Topeka and Santa Fe Railway Company (formerly the California Southern Railway Company), also excepting therefrom that portion of said Pueblo Lot 1787 lying Easterly of the Center line of the 100 feet Right of Way for Pacific Highway described in deed to the City of San Diego by deed recorded August 19, 1938, in Book 818, page 165 Official Records of San Diego County."

and all and singular the tenements, hereditaments, and appurtenances thereunto belong or in any wise appertaining be sold at public auction according to law, for cash in lawful money of the United States by the commissioner herein appointed to make such sale;

It is further hereby ordered, adjudged, and decreed that R. S. Lacy be and he is hereby appointed Commissioner to make
37 said sale and the sale of said lands, premises, tenements, hereditaments, and appurtenances under and by virtue of this decree and as provided by law; that before entering upon his duties as such commissioner he execute an undertaking in the sum of $100.00 in the manner and form provided by law with sufficient sureties to be approved by the Judge of this Court, to the effect that he, the said commissioner, will fulfill and perform the duties of his office according to law; that the compensation of said commissioner is hereby fixed at $35.00 and he is hereby directed and ordered to sell the said lands, premises, tenements, hereditaments, and appurtenances as provided by law and to report the sale thereof to the Clerk of this Court and perform all other duties of him required by law;

It is further ordered, adjudged, and decreed that out of the proceeds of said sale said commissioner retain his fees, disbursements, and costs of sale and pay to the plaintiffs or their attorneys out of such proceeds the aggregate sum of $11,169.17 so found due and owing herein to plaintiffs, with interest at the rate of seven percent (7%) per annum from the date of this decree and which said sums are secured by plaintiffs' said deed of trust;

It is further ordered, adjudged, and decreed that if no redemption shall be made from the sale of said lands and premises in the manner and within the time provided by law for making such redemption, the commissioner shall execute a deed to the purchaser or purchasers of the same at the expiration of three months from the delivery of his certificate of sale to such purchaser or purchasers, such deed to convey to him, her, it or them, or to his, her or their assigns the said lands and premises, and he, she, it or they shall be entitled to the possession of said premises from and after the delivery of such deed; that after the time from redemption from such sale has expired the said defendants George Styliano, Genell Styliano, Union Title Insurance and Trust Company, a corporation as Trustee, Wilton M. Morrison, United States of America, and State of California and all persons
38 and corporations claiming or to claim from, through or under them (if no redemption shall be made from said sale) shall be forever barred and foreclosed of all right, title to, interest, estate, and equity of redemption in the said lands, premises, tenements, hereditaments, and appurtenances and that any party to this action may purchase at said sale;

It is further ordered, adjudged, and decreed that the defendant Wilton M. Morrison has a judgment against the said defendants George Styliano and Genell Styliano rendered in this Court on April 25, 1947, in the sum of $78,726.90, an abstract of the same having been recorded May 2, 1947, in Book 2392 at Page 339 of Official Records in the County Recorder's Office of San Diego, California, and that the lien of said judgment is subordinate and inferior to the lien of plaintiffs' trust deed but that said judgment lien of said Wilton M. Morrison is superior to the liens of the United States of America and the lien of the State of California herein;

It is further ordered, adjudged, and decreed that the United States of America has liens against the said property herein described and that the total amount of said liens against the interest of Genell Styliano in said property as of June 12, 1948, was and is the sum of $9,666.36, plus interest from June 14, 1948, and that the total amount of the lien of said defendant United States of America against the interest of the defendant George Styliano

and Genell Styliano in said property is the sum of $475.68 plus interest from June 14, 1948;

It is further ordered, adjudged and decreed that the State of California has a lien in the sum of $721.23, including interest and penalties as of June 14, 1948, which lien is subject and subordinate to the judgment lien of the said Wilton M. Morrison and the respective liens of the United States of America and that the said liens of the United States of America and the State of California and each of the same are subordinate and inferior to the judgment lien of said Wilton M. Morrison;

It is further ordered, adjudged, and decreed that if any surplus shall remain from the sale of the said lands and premises by said commissioner as aforesaid after the payment in full of the amount herein decreed to be due and owing to plaintiffs, together with their interest and the cost and expenses of sale and the commissioner's fees, that the amount of such surplus remaining shall be first applied in payment of the judgment lien of said Wilton M. Morrison, secondly upon the liens of the United States of America in the event any surplus should remain after payment of the said judgment lien of Wilton M. Morrison with interest thereon, and thirdly, upon the liens of the State of California with interest in event any surplus should remain after payment of the aforesaid sums to plaintiffs and to Wilton M. Morrison and to the United States of America as aforesaid:

It is further ordered, adjudged, and decreed that in the event an appeal is taken from this judgment by either one or more of the defendants Wilton M. Morrison, United States of America, or the State of California that the surplus, if any, remaining from the sale of the property herein described after payment of the sums adjudged to be due to plaintiffs with interest thereon and the costs, fees and expenses of the Commissioner appointed by this Court, be deposited by said Commissioner with the Clerk of this Court, to be held by the Clerk of this Court pending final determination as to the ownership of the same on appeal;

It is further hereby ordered, adjudged, and decreed that this action and the same is hereby dismissed as to the defendants John Doe as Receiver in the bankruptcy of Richard Roe, a bankrupt person, John Doe as trustee in bankruptcy of Richard Roe, bankrupt person, John Doe, Jane Doe, Susan Grab, and Mary Keep.

Done in open Court this 23 day of August 1948.

ARTHUR L. MUNDO,
Judge of the said Superior Court.

40 [File endorsement omitted.]

In the Supreme Court of California

In Bank

Order transferring appeals

Filed January 28, 1949

The following appeals are transferred to the District Court of Appeal, Fourth Appellate District:

L. A. 20898, Winther v. Styliano—4 Civ. 3948
L. A. 20899, Rewick v. Styliano—4 Civ. 3949
L. A. 20900, DeWitt v. Styliano—4 Civ. 3950
L. A. 20901, Cavell v. Styliano—4 Civ. 3951

Dated: January 27, 1949.

GIBSON, *Chief Justice.*

[Clerk's certificate to foregoing paper omitted in printing.]
[File endorsement omitted.]

41 In the Supreme Court of California

In Bank

WINTHER ET AL., PLAINTIFFS

v.

MORRISON, DEFENDANT AND RESPONDENT

UNITED STATES OF AMERICA, DEFENDANT AND APPELLANT, AND CONSOLIDATED CASES

Order denying hearing after judgment by District Court of Appeal

Filed Nov. 14, 1949

Appellant's petition for hearing denied.
Voting for a hearing.

GIBSON, *Chief Justice.*

Dated Nov. 14, 1949.

[Clerk's certificate to foregoing paper omitted in printing.]
[File endorsement omitted.]

42 [File endorsement omitted.]

In the District Court of Appeal, In and for the Fourth Appellate District, State of California

Civil No. 3948

ALBERTA WINTHER, ET AL., PLAINTIFFS

vs.

WILTON M. MORRISON, ET AL., DEFENDANTS

Civil No. 3949

ROBERT M. REWICK, ET AL., PLAINTIFFS

vs.

GEORGE STYLIANO, ET AL., DEFENDANTS

Civil No. 3950

ROBERT M. DEWITT, ET AL., PLAINTIFFS

vs.

GEORGE STYLIANO, ET AL., DEFENDANTS

Civil No. 3951

RAY C. CAVELL, ET AL., PLAINTIFFS

vs.

GEORGE STYLIANO, ET AL., DEFENDANTS

UNITED STATES OF AMERICA, DEFENDANT-APPELLANT
WILTON M. MORRISON, DEFENDANT-RESPONDENT

Opinion

Filed Sept. 17, 1949

43 Appeals from judgments of the Superior Court of San Diego County, Hon. Arthur L. Mundo, Judge. Affirmed.

For Appellant: Theron Lamar Caudle, Assistant Attorney General; Ellis N. Slack, A. F. Prescorr, Hilbert P. Zarky, Helen Goodner, Special Assistants to the Attorney General, Attorney General's Office, Department of Justice, Washington 25, D. C.

Of Counsel for Appellant: James M. Carter, United States Attorney; E. H. Mitchell and James C. R. McCall, Assistant United States Attorneys; Eugene Harpole, Special Attorney, Bureau of Internal Revenue.

For Respondent: McInnis & Hamilton and Renwick Thompson.

These four cases have been consolidated for the purpose of appeal and are presented on an agreed statement of facts. The appeals are by the United States of America from judgments involving the relative priority of an attachment lien of defendant Morrison, and a subsequent lien of the United States for taxes.

George Stiliano and his wife, Genell Styliano, owned four parcels of real property in San Diego County. Three of these were mortgaged, one to Robert M. Rewick, et al., one to Robert M. DeWitt, et al., and one to Ray C. Cavell, et al. The fourth parcel had been sold and conveyed by the Stylianos to Alberta Winther and Margaret G. Young, and there was a balance owing to the Stylianos on the purchase price.

The Stylianos were indebted also to defendant Wilton M. Morrison on a promissory note. On October 17, 1946, Morrison brought an action against the Stylianos on this note and on the same day he procured the issuance of a writ of attachment in the action, pursuant to which, during the month of October, 1946, the interests of the Stylianos in the various parcels of real estate involved in the four actions were attached. Morrison recovered a judgment against the Stylianos in the sum of $78,938.55 on
44 April 24, 1947, and recorded an abstract thereof in the office of the County Recorder of San Diego County on May 2, 1947.

After the levy of the Morrison attachment, but before the recovery of his judgment and the recording of the abstract, certificates of assessment of Federal taxes were received in the Office of the Collector of Internal Revenue at Los Angeles, and notices of Federal tax liens against all property belonging to the Stylianos were filed in the office of the County Recorder of San Diego County. The notices were filed for record on December 3, 1946, December 5, 1946, December 10, 1946, and January 22, 1948.

In the Winther case the action was to determine the interests of the purchasers in the property, and the balance thereon had been deposited in court. The trial court ordered that the $1,500.00 so deposited be paid to Morrison in satisfaction pro tanto of the judgment lien, and held that the United States had a lien on the balance which was inferior to that of Morrison. The Rewick, DeWitt and Cavell cases were actions for foreclosure of mortgages and the plaintiffs therein recovered judgments in which the court ordered the mortgaged property sold and the proceeds applied as follows: First, to the payment of the respective mortgage judgments and costs; second, to the satisfaction of the Morrison judgment lien pro tanto; third, any balance to be paid to the United States on its federal tax lien. In each of the cases Morrison as-

serted his lien by virtue of the attachment and judgment and no question is raised as to the regularity of the attachment proceedings or judgment, or the correctness of the judgments of the trial court respecting the claims of the plaintiffs in any of the four actions.

The sole question involved on this appeal is whether the court erred in holding that the tax claims of the United States were subordinate to the attachment and judgment lien of defendant Morrison.

Section 542a of the Code of Civil Procedure provides in
45 part that "the lien of the attachment on real property attaches and becomes effective upon the recording of a copy of the writ, together with a description of the property attached, and a notice that it is attached with the county recorder of the county wherein said real property is situate." It is further provided that "the attachment * * * shall be a lien upon the real property attached for a period of three years after the date of levy unless sooner released or discharged either as provided in this chapter, or by dismissal of the action." Since it is conceded that the attachment herein was properly issued and properly levied upon the property, it is evident that Morrison perfected a lien thereon which secured and insured the payment to him of any judgment that was recovered by him in the action, insofar as the property attached could be applied to the judgment. (Halstead v. Halstead, 72 Cal. App. (2d) 832, 836). The lien attached immediately upon the levy of the attachment. (Code Civil Procedure, 542a, supra; Ritter v. Scannell, 11 Cal. 238, 240.) "It is, in effect, an incipient execution—an execution, so to speak, in advance of trial and judgment." (3 Cal. Jur. p. 402; Porter v. Pico, 55 Cal. 165, 174.) A sheriff's deed executed in pursuance of an execution sale under a judgment rendered in an attachment suit relates back to and takes effect from the levy of the attachment, if the levy was such as to create a lien. (Martinovich v. Marsicano, 150 Cal. 597, 600.) As was said in Balzano v. Traeger, 93 Cal. App. 640, 643: "When the attachment is upon real property and the judgment lien is established, the attachment lien merges in the lien of the judgment and thereafter the only effect of the lien of such attachment is to preserve the priority thereby acquired. This priority is continued and enforced under the judgment." The lien acquired by an attachment is a vested interest affording specific security for satisfaction of the debt put in suit and is a special interest which an attaching
46 creditor has in property held in custody of the sheriff sufficient to support an action for conversion. (McCaffey C. Co. Inc. v. Bank of America, 109 Cal. App. 415, 423, 424.)

The lien of the United States in the instant action was placed upon the property of the Stylianos after the attachment lien was perfected under the laws of California. It is the position of the United States that at the time its lien attached, Morrison had only a potential right of a contingent lien and that such a lien is inchoate and is not sufficiently specific or perfected to prevent a subsequent federal tax lien from attaching to the property with priority. In support of its position the United States relies on Sections 3670, 3671, and 3672 of the Internal Revenue Code, 26 U. S. C. A. Section 3670 provides: "If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, penalty, additional amount, or addition to such tax, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person."

Section 3671 is as follows: "Unless another date is specifically fixed by law, the lien shall arise at the time the assessment list was received by the collector and shall continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time."

Section 3672 provides, with respect to the liens referred to in sections 3670 and 3671, that: "Such lien shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice thereof has been filed by the collector * * * (1) In accordance with the law of the State or Territory in which the property subject to the lien is situated, whenever the State or Territory has by law provided for the filing of such notice; * * *"

47 Under the provisions of Section 3671, supra, the tax lien in this case arose on December 3rd, 5th, and 10th, 1946, and on January 22, 1948, the dates on which notices of tax liens were filed for record in San Diego County. It is argued by the United States that when its lien arose Morrison was not a mortgagee, a pledgee, a purchaser, or a judgment creditor, and that his attachment lien is subordinate to the tax lien. In support of its argument appellant relies principally upon the case of MacKenzie v. United States, 109 Fed. (2d) 540, in which case it appears that the assessment list was received by the collector in June 1931, the attachment was issued and levied upon the property on September 4, 1931, and on May 28, 1932, judgment was recovered in the attachment suit. It was held in that case that the lien of the Government for taxes was prior to that of the judgment creditor. Since the tax lien arose prior to the issuance of the attachment it was not necessary to the decision to pass upon the priorities of tax and attachment liens where the tax lien, as here,

arose after the levy of the attachment. The factual situation here involved was not before the court.

The liens created by Sections 3670 and 3671 of the Internal Revenue Code are general and not priority liens. (Board of Supervisors of La. State University v. Hart, 26 So. Rep. (2d) 361, 363.) There is no provision in either section indicating that the liens for taxes have a priority over attachment liens placed on the property prior to the time when the tax liens arise. The tax lien is upon "all property and rights to property, whether real or personal, belonging to such person."

Whatever interest the Stylianos had in the real property involved, at the time of the tax lien, was subject to the attachment, and any mortgage or conveyance by them would be subject to the rights of an attaching creditor. It follows that the tax lien attached to whatever ownership the Stylianos had in the
48 property at the time the lien arose and that the Government could acquire only such title as the Stylianos then had. As was said in New York Cas. Co. v. Zwerner, 58 Fed. Supp. 473, 477: "The rights of the Collector of Internal Revenue can rise no higher than those of the taxpayer whose right to property is sought to be levied upon; * * *"

It should also be noted that while Section 3672 of the Internal Revenue Code provides that the tax lien shall not be valid as against any mortgagee, pledgee, purchaser or judgment creditor until notice has been filed by the collector, it does not provide that the mortgagee shall be one who has recorded his mortgage; it does not expressly state that after notice is filed the lien in favor of the Government shall be subject to all existing mortgages, or that the lien shall be superior to them. The priority of liens as between mortgagees, pledgees, purchasers and judgment creditors is not therein provided for. As we read the section its purpose is to afford notice to those named, of the existence of tax claims, before dealing with the property. (Exchange Nat. Bank of Tulsa v. Davy, et al., 13 Fed. Supp. 226, 228.)

In Board of Supervisors v. Hart, 26 So. (2d) 361, 210 La. 78, the precise question here involved was passed upon. In that case the attachment was levied and the attachment lien arose on July 25, 1939. Thereafter the assessment list was received by the collector on February 15, 1940, and notice was filed on February 16, 1940. Thereafter judgment was rendered in the attachment case.

The court held that the nature of the rights flowing from an attachment in that State (Louisiana) must be determined by the law of that State; that the lien of the attachment when recognized by judgment relates back to the date of the seizure and is superior to or primes any intervening mortgages, liens, encumbrances or purchasers; that while a lien and privilege resulting from an attachment in its strictest sense is not a judgment, it is specific

49 and attaches to the priority from the moment of the seizure and is superior to a lien, mortgage or privilége thereafter arising and the situation is not altered if the judgment recognizing the attachment is rendered subsequent to the intervening lien, mortgage or privilege; that the tax lien of the United States attached to the property of Smith (against whom the assessment was levied) in the condition in which the property was at the time the lien arose; that at the time Smith's property was attached by the Louisiana State University it was in the custody of the court and that the tax lien was subject to the attachment lien. The court considered the MacKenzie case, supra, but did not consider it to be controlling as the tax lien in that case arose prior to the issuance of the attachment.

In United States v. Yates (Texas Civil Appeals), 204 S. W. (2d) 399, the attachment was levied on May 15, 1944. Thereafter on May 26, 1944, the assessment list was received and notice of the lien was filed. Thereafter judgment was obtained. The court followed Board of Supervisors v. Hart, supra, and held that the lien of the attachment was prior to the lien of the United States for taxes.

In United States v. 52.11 Acres of Land, etc., 73 Fed. Supp. 820 (Missouri Dist. Court), it was held that money paid into registry of court by the United States in satisfaction of landowners' respective judgments for taking of land by the United States, and representing indebtedness of landowners to third persons under the landowners' contracts with the United States, was subject to lien in favor of third person's creditor superior to Internal Revenue Collector's lien for federal taxes assessed against third person, where a creditor obtained liens by virtue of garnishment proceedings in 1942 and 1945 and notice of tax liens were filed
50 thereafter.

The rights acquired by Morrison by virtue of his attachment at a time when the property was free of tax liens must be determined by the law of California. (Gray v. Little, 97 Cal. App. 442, 450.) The determination of what constituted the property of the Stylianos on the date of establishment of the tax lien is primarily a matter of State law and the Collector of Internal Revenue can reach only such property rights as the Stylianos had when the lien arose. (United States v. Winnett, 165 Fed. (2d) 149, 151.) Whatever rights the Stylianos had in the real property involved were subject to the valid subsisting attachment lien of Morrison and the tax lien of the United States was not entitled to priority over it.

Judgments affirmed.

MUSSELL, J.

I concur.

GRIFFIN, *Acting P. J.*

51 [File endorsement omitted.]

In the Superior Court of the State of California in and for the County of San Diego

No. 140598

ALBERTA WINTHER AND MARGARET G. YOUNG, ET AL.,

vs.

WILTON M. MORRISON, ET AL., DEFENDANTS

Stipulation and order re substitution of party defendant

Filed Nov. 18, 1949

Whereas, an action was commenced in the above entitled matter against Wilton M. Morrison and a trial was had in this matter and judgment entered thereon and thereafter the said Wilton Morrison died, the Security Trust & Savings Bank of San Diego was duly appointed and qualified as Executor of the Last Will and Testament of the said Wilton Morrison, the file number thereof being 42436 of the records of the County of San Diego, State of California;

It is stipulated and agreed that the Security Trust & Savings Bank of San Diego as Executor of the estate of the said Wilton Morrison be substituted as defendant in the place and stead of defendant Wilton M. Morrison.

Dated: August 26, 1949.

GRAY, CARY, AMES & DRISCOLL,
By J. G. DRISCOLL, JR.,
Attorneys for Plaintiffs.

WHELAN & WHELAN,
By VINCENT WHELAN,
Attorneys for Defendant Bailey.

JAMES M. CARTER,
As Attorney for United States of America.
By EDWARD R. MCHALE,
Ass't. U. S. Att'y.

MCINNIS & HAMILTON,
RENWICK THOMPSON,
By WILLIAM T. FITZGERALD,
Attorneys for Defendant Morrison.

52 Based upon the foregoing Stipulation and other proof, and good cause appearing therefor;

It is hereby ordered that the Security Trust & Savings Bank of San Diego, California, as Executor of the estate of Wilton M. Morrison, above described defendant, be and hereby is substituted as party defendant in the place of WILTON M. MORRISON.

Dated: August 30, 1949.

ARTHUR L. MUNDO,
Judge of the Superior Court.

[Clerk's certificate to foregoing paper omitted in printing.]

53 [File endorsement omitted.]

In the Superior Court of the State of California in and For the County of San Diego

No. 144895

ROBERT M. REWICK, ET AL., PLAINTIFFS

vs.

GEORGE STYLIANO, ET AL., PLAINTIFFS

Stipulation and order substituting party defendant

Filed Nov. 18, 1949

Whereas, an action was commenced in the above case against certain defendants, including Wilton M. Morrison and the United States, and after judgment was entered herein, Wilton M. Morrison died and the Security Trust and Savings Bank of San Diego was duly appointed and qualified as Executor of the Last Will and Testament of the said Wilton M. Morrison in probate proceeding No. 42436 in the captioned Court; and

Whereas, there is now pending an appeal from such judgment by the United States against said Wilton M. Morrison, deceased, they being the sole parties in interest on said appeal;

It is stipulated and agreed that the Security Trust and Savings Bank of San Diego, Executor of the Will of Wilton M. Morrison,

Deceased, be substituted in this case as defendant in the
54 place and stead of Wilton M. Morrison.

ERNEST A. TOLIN,
United States Attorney,

CLYDE C. DOWNING,
JAMES C. R. MCCALL,
Assistant U. S. Attorneys,

By JAMES C. R. MCCALL,
Attorneys for Defendant,
United States of America.

MCINNIS & HAMILTON,
RENWICK THOMPSON,
By J. W. MCINNIS,
Attorneys for Defendant Morrison.

Based on the foregoing stipulation,

It is hereby ordered that the Security Trust and Savings Bank of San Diego, Executor of the Will of Wilton M. Morrison, be and hereby is substituted as a party defendant in this case in the place and stead of Wilton M. Morrison.

ARTHUR L. MUNDO,
Judge of the Superior Court.

Dated: Nov. 3, 1949.

[Clerk's certificate to foregoing paper omitted in printing.]

55 [File endorsement omitted.]

In the Superior Court of the State of California in and for the County of San Diego

No. 144932

ROBERT M. DEWITT, ET AL., PLAINTIFFS
vs.
GEORGE STYLIANO, ET AL., DEFENDANTS

Stipulation and order substituting party defendant

Filed Nov. 18, 1949

Whereas, an action was commenced in the above case against certain defendants, including Wilton M. Morrison and the United States, and after judgment was entered herein, Wilton M. Morrison died and the Security Trust and Savings Bank of San Diego was duly appointed and qualified as Executor of the Last Will and Testament of the said Wilton M. Morrison in probabe proceeding No. 42436 in the captioned Court; and

Whereas, there is now pending an appeal from such judgment by the United States against said Wilton M. Morrison, deceased, they being the sole parties in interest on said appeal;

It is stipulated and agreed that the Security Trust and Savings Bank of San Diego, Executor of the Will of Wilton M. Morrison, Deceased, be substituted in this case as defendant in the
56 place and stead of Wilton M. Morrison.

ERNEST A. TOLIN,
United States Attorney,

CLYDE C. DOWNING,
JAMES C. R. MCCALL,
Assistant U. S. Attorneys,

By JAMES C. R. MCCALL
Attorneys for Defendant,
United States of America.

MCINNIS & HAMILTON,
RENWICK THOMPSON,
By J. W. MCINNIS,
Attorneys for Defendant Morrison.

Based on the foregoing stipulation,

It is hereby ordered that the Security Trust and Savings Bank of San Diego, Executor of the Will of Wilton M. Morrison, be and hereby is substituted as a party defendant in the place and stead of Wilton M. Morrison.

ARTHUR L. MUNDO,
Judge of the Superior Court.

Dated: Nov. 3, 1949.

[Clerk's certificate to foregoing paper omitted in printing.]

57 [File endorsement omitted.]

In the Superior Court of the State of California in and for the County of San Diego

No. 145955

RAY C. CAVELL, ET AL., PLAINTIFFS

vs.

GEORGE STYLIANO, ET AL., DEFENDANTS

Stipulation and order substituting party defendant

Filed Nov. 18, 1949

Whereas, an action was commended in the above case against certain defendants, including Wilton M. Morrison and the United States, and after judgment was entered herein, Wilton M.

Morrison died and the Security Trust and Savings Bank of San Diego was duly appointed and qualified as Executor of the Last Will and Testament of the said Wilton M. Morrison in probate proceeding No. 42436 in the captioned Court; and

Whereas, there is now pending an appeal from such judgment by the United States against said Wilton M. Morrison, deceased, they being the sole parties in interest on said appeal;

It is stipulated and agreed that the Security Trust and Savings Bank of San Diego, Executor of the Will of Wilton M. Morrison, Deceased, be substituted in this case as defendant in the
58 place and stead of Wilton M. Morrison.

ERNEST A. TOLIN,
United States Attorney,
CLYDE C. DOWNING,
JAMES C. R. MCCALL,
Assistant U. S. Attorneys,
By JAMES C. R. MCCALL,
Attorney for Defendant,
United States of America.
MCINNIS & HAMILTON,
RENWICK THOMPSON,
By J. W. MCINNIS,
Attorneys for Defendant Morrison.

Based on the foregoing stipulation,

It is hereby ordered that the Security Trust and Savings Bank of San Diego, Executor of the Will of Wilton M. Morrison, be and hereby is substituted as a party defendant in the place and stead of Wilton M. Morrison.

ARTHUR L. MUNDO,
Judge of the Superior Court.

Dated: Nov. 3, 1949.

[Clerk's certificate to foregoing paper omitted in printing.]

59 [File endorsement omitted.]

In the District Court of Appeal, Fourth Appellate District, State of California

4 Civil No. 3948, 3949, 3950, 3951

ALBERT W. WINTHER, ET AL., PLAINTIFFS

vs.

WILTON M. MORRISON, ET AL., DEFENDANTS

UNITED STATES OF AMERICA, DEFENDANT-APPELLANT

WILTON M. MORRISON, DEFENDANT-RESPONDENT

Order substituting party defendant-respondent

Filed Nov. 12, 1949

By the Court:

Pursuant to a certified copy of an order of the Superior Court of the County of San Diego filed herein in each cause, it is ordered that the Security Trust & Savings Bank of San Diego, as Executor of the estate of Wilton M. Morrison, deceased, be and it is hereby substituted in the place and stead of Wilton M. Morrison as defendant and respondent in each of the above actions.

Dated: November 21, 1949.

60 [File endorsement omitted.] BARNARD, *P. J.*

61 In the District Court of Appeal, Fourth Appellate District, State of California

Civil Nos. 3948, 3949, 3950, and 3951

[Titles omitted.]

62 *Stipulation to recall remittitur and stay enforcement of judgment pending action by the United States Supreme Court*

Filed Dec. 31, 1949

The respondent Security-First National Bank, Executor of the Will of Wilton M. Morrison, Deceased, and the appellant United States of America, through their respective counsel, stipulate and agree as follows:

1. The Supreme Court of California having denied a hearing thereon, the United States of America is preparing to, and will, petition the Supreme Court of the United States for a writ of certiorari to review the final judgment of the District Court of

Appeal of the State of California, Fourth Appellate District, entered September 17, 1949, affirming the judgments of the Superior Court of the State of California in and for the County of San Diego in the above consolidated cases; and to facilitate such application for certiorari the said Fourth District Court of Appeal is requested by the parties to enter the following order, to wit:

2. That the remittitur heretofore issued on said judgment of the Fourth District Court of Appeal be recalled; and

3. That the execution and enforcement of said judgment be stayed without bond pending application by the United States of America to the Supreme Court of the United States for writ of certiorari and until final disposition of such application and the causes by the Supreme Court of the United States, or until further order of the Fourth Court of Appeal.

ERNEST A. TOLIN,
United States Attorney.

E. H. MITCHELL,
JAMES C. R. MCCALL,
Assistant United States Attorneys.

By JAMES C. R. MCCALL,
Attorneys for Appellant.

MCINNIS & HAMILTON,
RENWICK THOMPSON,
By JOHN W. MCINNIS,
Attorneys for Respondent.

62a POINTS AND AUTHORITIES

1. The application for writ of certiorari is authorized. Title 28 U. S. Code Sec. 1257 (3); U. S. Sup. Ct. Rules Nos. 38 and 43.

2. The stipulated recall of the remittitur is authorized. Rule 25 (d) of Rules on Appeal; 1 Hillyer's Forms Pl. & Pr. (1949 Proc. Sup.) No. 1068.48.

3. The stipulated stay of enforcement of judgment is authorized. Title 28 U. S. Code Sec. 2101 (3).

63 [File endorsement omitted.]

In the District Court of Appeal in and for the Fourth Appellate District, State of California

Civil No. 3948
Civil No. 3949
Civil No. 3950
Civil No. 3951

[Titles omitted.]

Order recalling remmittituras

Filed Dec. 31, 1949

By the Court:

Upon stipulation of counsel filed and good cause appearing therefor, it is ordered that the remittitur heretofore issued in each of the above entitled causes be, and the same is hereby recalled and the County Clerk of the County of San Diego is directed to return said remittituras to the Clerk of this Court at 263 Third Street, San Bernardino, California; and it is further ordered that the execution and enforcement of judgment be stayed without bond until the further order of this court.

Dated: December 31, 1949.

GRIFFIN, *Acting P. J.*

64 [Clerk's certificate to foregoing transcript omitted in printing.]

U. S. GOVERNMENT PRINTING OFFICE: 1950

Supreme Court of the United States

No. 10, October Term, 1950

Order allowing certiorari

Filed May 1, 1950

The petition herein for a writ of certiorari to the District Court of Appeal of California, Fourth Appellate District, is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Supreme Court of the United States

No. 11, October Term, 1950

Order allowing certiorari

Filed May 1, 1950

The petition herein for a writ of certiorari to the District Court of Appeal of California, Fourth Appellate District, is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Supreme Court of the United States

No. 12, October Term, 1950

Order allowing certiorari

Filed May 1, 1950

The petition herein for a writ of certiorari to the District Court of Appeal of California, Fourth Appellate District, is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Supreme Court of the United States

No. 13, October Term, 1950

Order allowing certiorari

Filed May 1, 1950

The petition herein for a writ of certiorari to the District Court of Appeal of California, Fourth Appellate District, is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

892794—50

U. S. GOVERNMENT PRINTING OFFICE: 1950

In the Supreme Court of the United States

OCTOBER TERM, 1949

No. 584 10

UNITED STATES OF AMERICA, PETITIONER

v.

SECURITY TRUST AND SAVINGS BANK OF SAN DIEGO, EXECUTOR OF THE WILL OF WILTON M. MORRISON, GEORGE STYLIANO, ALBERTA WINTHER, ET AL.

No. 585 11

UNITED STATES OF AMERICA, PETITIONER

v.

SECURITY TRUST AND SAVINGS BANK OF SAN DIEGO, EXECUTOR OF THE WILL OF WILTON M. MORRISON, GEORGE STYLIANO, ROBERT M. REWICK, ET AL.

No. 586 12

UNITED STATES OF AMERICA, PETITIONER

v.

SECURITY TRUST AND SAVINGS BANK OF SAN DIEGO, EXECUTOR OF THE WILL OF WILTON M. MORRISON, GEORGE STYLIANO, ROBERT M. DEWITT, ET AL.

No. 587 13

UNITED STATES OF AMERICA, PETITIONER

v.

SECURITY TRUST AND SAVINGS BANK OF SAN DIEGO, EXECUTOR OF THE WIEL OF WILTON M. MORRISON, GEORGE STYLIANO, RAY C. CAVELL, ET AL.

PETITION FOR WRITS OF CERTIORARI TO THE DISTRICT COURT OF APPEAL FOR THE STATE OF CALIFORNIA, FOURTH APPELLATE DISTRICT

INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	4
Statutes involved	4
Statement	4
Reasons for granting the writ	8
Conclusion	14
Appendix	15

CITATIONS

Cases:

Anderson v. *Schloesser*, 153 Cal. 219	10
Bagley v. *Ward*, 37 Cal. 121	10
Balzano v. *Traeger*, 93 Cal. App. 640	10
Board of Sup'rs of La. State University v. *Hart*, 210 La. 78	13
Glass City Bank v. *United States*, 326 U. S. 265	9
MacKenzie v. *United States*, 109 F. 2d 540	9, 13
Maryland Casualty Co. v. *Charleston Lead Works*, 24 F. 2d 836	9
Metropolitan Life Ins. Co. v. *United States*, 107 F. 2d 311	9
Michigan v. *United States*, 317 U. S. 338	9, 12, 13
Miller v. *Bank of America, N. T. & S. A.*, 166 F. 2d 415	10, 13
New York v. *Maclay*, 288 U. S. 290	11, 13
Porter v. *Pico*, 55 Cal. 165	10
Propper v. *Clark*, 337 U. S. 472	12
Puissegur v. *Yarbrough* 29 Cal. 2d 409	9
United States v. *City of Greenville*, 118 F. 2d 963	9
United States v. *R. F. Fisher*, decided September 7, 1948	13
United States v. *Reese*, 131 F. 2d 466	12, 13
United States v. *Remund*, 330 U. S. 539	2
United States v. *Texas*, 314 U. S. 480	2, 11, 13
United States v. *Waddill Co.*, 323 U. S. 353	2, 11, 13
United States v. *Yates*, 204 S. W. 2d 399	13

Statutes:

Deering's California Code of Civil Procedure (1941 ed.):

Sec. 537	15
Sec. 542b	15
Sec. 550	15

Statutes—Continued

Page

Deering's California Code of Civil Procedure (1941 ed.), 1947 Pocket Supplement:
- Sec. 542 16
- Sec. 542a 17
- Sec. 674 18

Internal Revenue Code:
- Sec. 3670 (26 U.S.C. 1946 ed., Sec. 3670) 2, 8, 19
- Sec. 3671 (26 U.S.C. 1946 ed., Sec. 3671) 2, 8, 19
- Sec. 3672 (26 U.S.C. 1946 ed., Sec. 3672) 2, 8, 11, 19

Revised Statutes, Sec. 3466 (31 U.S.C. 1946 ed., Sec. 191) 11

In the Supreme Court of the United States

OCTOBER TERM, 1949

No. ~~584~~ 10

UNITED STATES OF AMERICA, PETITIONER

v.

SECURITY TRUST AND SAVINGS BANK OF SAN DIEGO, EXECUTOR OF THE WILL OF WILTON M. MORRISON, GEORGE STYLIANO, ALBERTA WINTHER, ET AL.

No. ~~585~~ 11

UNITED STATES OF AMERICA, PETITIONER

v.

SECURITY TRUST AND SAVINGS BANK OF SAN DIEGO, EXECUTOR OF THE WILL OF WILTON M. MORRISON, GEORGE STYLIANO, ROBERT M. REWICK, ET AL.

No. ~~586~~ 12

UNITED STATES OF AMERICA, PETITIONER

v.

SECURITY TRUST AND SAVINGS BANK OF SAN DIEGO, EXECUTOR OF THE WILL OF WILTON M. MORRISON, GEORGE STYLIANO, ROBERT M. DEWITT, ET AL.

No. ~~587~~ 13

UNITED STATES OF AMERICA, PETITIONER

v.

SECURITY TRUST AND SAVINGS BANK OF SAN DIEGO, EXECUTOR OF THE WILL OF WILTON M. MORRISON, GEORGE STYLIANO, RAY C. CAVELL, ET AL.

PETITION FOR WRITS OF CERTIORARI TO THE DISTRICT COURT OF APPEAL FOR THE STATE OF CALIFORNIA, FOURTH APPELLATE DISTRICT

The Solicitor General, on behalf of the United States, prays that writs of certiorari issue to re-

view the judgments of the District Court of Appeal for the State of California, Fourth Appellate District, entered in these cases.

OPINION BELOW

The opinion of the District Court of Appeal (R. 28-33), is reported at 93 A. C. A. 751.

JURISDICTION

The judgments of the District Court of Appeal were entered on September 17, 1949. (R. 28-33.) On November 14, 1949, the Supreme Court of California denied the petition of the United States for a hearing, Chief Justice Gibson having voted to grant the hearing. (R. 27.) The jurisdiction of this Court is invoked under 28 U. S. C., Section 1257 (3), on the ground that the decision below denies a title, right, privilege, or immunity claimed by the United States under Sections 3670-3672 of the Internal Revenue Code. The cases relied upon to sustain the jurisdiction of this Court are *United States* v. *Remund*, 330 U. S. 539; *United States* v. *Waddill Co.*, 323 U. S. 353; *United States* v. *Texas*, 314 U. S. 480.

These are four suits brought in the Superior Court of the State of California, to quiet title to, or to foreclose a mortgage on, four parcels of real estate held by the respondents Styliano. The United States was named a defendant in each case because it had duly obtained and filed a lien for unpaid federal taxes, under Section 3670-3672

of the Internal Revenue Code, upon the Stylianos' property. Respondent Morrison was named a defendant as a creditor of the Stylianos who had recovered a judgment, and obtained a judgment lien, against them in April and May 1947; this date was subsequent to the United States' tax liens, but an attachment which Morrison had issued, at the time he commenced his suit against the Stylianos, antedated the federal liens.

In each case, the United States asserted, and urged upon the Superior Court, its right under Sections 3670-3672 to priority over Morrison in the satisfaction of its liens (R. 2-4).[1] Morrison also asserted his right to priority. The trial court held Morrison's lien superior (R. 2, 11-26). On appeal to the District Court of Appeal, the United States made the same contention in brief and argument. That court rejected the contention (R. 28-33). The United States then petitioned the Supreme Court of the State of California for a hearing on the District Court of Appeal's decision, presenting the same contention. This petition was denied (R. 27).

The question presented is one of substance, as is more fully developed under the reasons for granting the writ (*infra*, pp. 8-14).

---

[1] The issue was raised in the United States' answers, on oral argument, and in motions for new trial (R. 5-6).

QUESTION PRESENTED

The United States obtained and filed notice of federal tax liens. Thereafter, a private creditor, who had previously issued an attachment in connection with his suit against the tax debtor, secured a judgment lien against the tax debtor's property.

Did the court below err in deciding that the judgment lien of the private creditor ranked superior to the federal tax lien merely because he had obtained an attachment against the property prior to the time that the federal tax lien arose?

STATUTES INVOLVED

The applicable provisions of the statutes involved are set forth in the Appendix, *infra*, pp. 15-20.

STATEMENT

These cases, consolidated below, involve the relative priority of liens of the United States for unpaid taxes against property of the debtors, George Styliano, and his wife Genell Styliano, as against a lien of a subsequent judgment creditor, Wilton M. Morrison.

The Stylianos owned four parcels of real property in San Diego, California. Three of these parcels had been mortgaged, one to Robert M. Rewick and Mary Elizabeth Rewick; one to Robert M. DeWitt and Jessie R. DeWitt; and one to Ray C. Cavell and Myrtle M. Cavell. The fourth parcel had been sold and conveyed by the Stylianos to Alberta Winther and Margaret G. Young, and

there was a balance owing to the Stylianos on the purchase price on that parcel of land. (R. 29.)

The Stylianos were also indebted to Wilton M. Morrison on an unsecured note. On October 17, 1946, Morrison brought an action against the Stylianos on this note in the Superior Court of San Diego County, California. In connection with this suit, he procured the issuance and levy of an attachment on the interests of the Stylianos in these four parcels of property, pursuant to Sections 537 and 542, California Code of Civil Procedure, *infra*, pp. 15-18. (R. 3, 29.)

During the pendency of Morrison's action against the Stylianos, notices of federal tax liens against all the Stylianos' property were filed in the Office of the County Recorder, San Diego, California, on behalf of the Collector of Internal Revenue at Los Angeles, in the total amount of $10,142.04. These notices were filed on December 3, 1946, December 5, 1946, December 10, 1946, and January 22, 1948. The taxes for which these notices of lien were filed had been assessed by the Commissioner of Internal Revenue, and the assessments had been received in the office of the Collector of Internal Revenue. These taxes remained unpaid after notice and demand, and the notices of lien were filed in accordance with law. (R. 3-4, 29.)

On April 24, 1947, Morrison, in the action on his note, recovered a judgment against the Stylianos

in the amount of $78,938.55. On May 2, 1947, an abstract of this judgment was recorded in the office of the County Recorder, San Diego County. (R. 3, 29.)

In No. 3948 below, Alberta Winther and Margaret G. Young brought an action to quiet title, the Stylianos, Morrison, and the United States of America being named as defendants. The plaintiffs paid $1,500 into court, representing the balance of the purchase price due the Stylianos, and prayed for a deed clear of all liens. In Nos 3949, 3950, 3951, below, the Rewicks, the DeWitts and the Cavells brought actions to foreclose their mortgages, the Stylianos, Morrison, and the United States of America, being the defendants. All of these actions were brought in the Superior Court of San Diego County, California (R. 29.)

In the Winther case, after trial, the court ordered that the money which had been paid into court, after the deduction of certain expenses, be paid to Morrison in satisfaction *pro tanto* of his judgment lien. The court held that the United States had a lien on the balance of the fund which was inferior to that of Morrison. Morrison's lien, if superior to that of the United States, would exhaust the fund which had been paid into court. (R. 2-3, 11-13, 29.)

In the Rewick, DeWitt, and Cavell cases, the court ordered that the mortgaged property be sold and the proceeds applied as follows: First, to the

payment of the respective mortgage judgments, plus costs; second, to the satisfaction of the Morrison judgment lien, *pro tanto;* third, any balance to be paid to the United States on its federal tax liens (R. 2-3, 13-26, 29.)

The judgments in the Winther and DeWitt cases were entered on July 6, 1948. Judgments in the Rewick and Cavell cases were entered on August 23, 1948. On July 2, 1948, the United States filed a motion for a new trial in each case, the motions being denied on July 13, 1948. (R. 2, 5-6.)

On July 27, 1948, the United States filed a notice of appeal with the Supreme Court of California, the appeal being only from the portions of the judgment rendered in favor of Morrison and the holding of the trial court that his lien was superior to the tax liens of the United States (R. 6-10). By order, the cases were consolidated on appeal (R. 10). An agreed statement on appeal was filed on January 15, 1949, and a supplemental statement on appeal was filed on January 26, 1949 (R. 1-27). Subsequently, the Supreme Court of California transferred the four cases to the District Court of Appeals, Fourth Appellate District (R. 27). The District Court of Appeal, in an opinion filed September 17, 1949, affirmed the judgments of the Superior Court, holding that the liens of the United States were inferior to the lien of Morrison. (R. 28-33) A petition for hearing was filed by the United States in the Supreme Court of California and was denied on November 14, 1949,

Chief Justice Gibson having voted to grant the hearing (R. 27). Subsequently, by order, the Security Trust and Savings Bank of San Diego, Executor of the Will of Wilton M. Morrison was substituted as a party in Morrison's stead (R. 34-39).

REASONS FOR GRANTING THE WRIT

1. The decision below is wrong in holding that a lien of the United States for unpaid taxes can be displaced by a subsequent judgment lien where the judgment creditor has secured an attachment against the tax debtor's property which antedates the tax lien of the United States.

Section 3670 of the Internal Revenue Code (Appendix, *infra*, p. 19), provides that if any person neglect or refuses to pay any tax after demand has been made, the amount of the tax shall be a lien in favor of the United States, "upon all property and rights to property, whether real or personal, belonging to such person." Under Section 3671 of the Code (Appendix, *infra*, p. 19), the lien arises at the time the assessment list is received by the Collector, unless another date is fixed by law, and continues until the liability is satisfied or becomes unenforceable by the lapse of time. Section 3672 (a) (Appendix, *infra*, pp. 19-20), provides that the lien of the United States is not valid against any "mortgagee, pledgee, purchaser, or judgment creditor" until notice of the lien has been filed by the Collector in the manner specified by that section.

The tax liens of the United States in this case arose during the pendency of an action brought by Morrison, a creditor of the tax debtors, and notices of the liens were duly filed before the time that he recovered judgment. The tax liens of the United States were complete, specific liens which attached to all the property of the debtors (*Glass City Bank* v. *United States*, 326 U. S. 265; *United States* v. *City of Greenville*, 118 F. 2d 963, 965 (C.A. 4); *Metropolitan Life Ins. Co.* v. *United States*, 107 F. 2d 311, 313 (C.A. 6); *Maryland Casualty Co.* v. *Charleston Lead Works*, 24 F. 2d 836, 838 (E.D. S.C.)), and, on accepted principles, could not be ranked inferior to a subsequent judgment lien. *Michigan* v. *United States*, 317 U. S. 338; *MacKenzie* v. *United States*, 109 F. 2d 540 (C.A. 9).

While Morrison had secured an earlier attachment against the property in question, in connection with his then pending action against the tax debtors, he did not thereby carve out that kind or quality of a present interest in the property which might prevent a subsequent federal tax lien from being effective with respect to all the property. An attaching creditor in California has been aptly described as obtaining "only a potential right or a contingent lien * * *." *Puissegur* v. *Yarbrough*, 29 Cal. 2d 409, 412. The numerous California decisions with respect to the various incidents of an attachment in that state demonstrate that this is an appropriate description, and the courts below did not suggest otherwise. Accordingly, at

the time that he secured the attachment, the creditor here obtained no specific rights which were presently enforceable against the debtor's property. Under California law, such rights would come into existence only if he were successful in securing a judgment in his principal action. In the latter circumstances, California considers the judgment lien as relating back to the date of the attachment so that it possesses priority over interests in the property which have arisen during the interval. *Bagley* v. *Ward*, 37 Cal. 121; *Porter* v. *Pico*, 55 Cal. 165; *Anderson* v. *Schloesser*, 153 Cal. 219; *Balzano* v. *Traeger*, 93 Cal. App. 640.

The relative priority of Morrison and the United States, however, must be tested by their interests in the property at the time when the lien of the United States came into existence—not by later events. Had the United States proceeded to enforce its lien immediately when it arose, it is difficult to believe that Morrison could have interfered on the ground that he might some day obtain a judgment and secure enforceable rights against the property. See *Miller* v. *Bank of America, N.T. & S.A.*, 166 F. 2d 415 (C.A. 9). At that time he possessed only a contingent and potential right against the property, which might ripen into a more perfect lien in the future—but not necessarily so.

The potential right or contingent lien of the attaching creditor thus served as nothing more than a "*caveat* of a more perfect lien to come."

New York v. *Maclay*, 288 U. S. 290, 294. Its existence could not prevent the specific, perfected tax lien of the United States from immediately applying to all of the property of the tax debtor, for the attaching creditor had not yet obtained any specific interest in the property. Even under California law, Morrison did not obtain a specific, perfected lien at least until he had secured his judgment lien, and this occurred after the lien of the United States had become valid as against judgment creditors by the filing of the notice required by Section 3672 (a), of the Internal Revenue Code (*infra*, pp. 19-20).

This Court has repeatedly held that the general priority of the United States, under Section 3466 of the Revised Statutes (31 U.S.C. 1946 ed., Sec. 191), is not affected by pre-existing liens which are not specific or perfected at the time when the Federal Government's right to priority arises. Even though the local lien becomes specific and perfected at a later time, and even though state law requires the perfected lien to date back so that it takes precedence over intervening private liens, these decisions hold that the priority of the United States will not be affected. *New York* v. *Maclay, supra*; *United States* v. *Texas*, 314 U. S. 480; *United States* v. *Waddill Co.*, 323 U. S. 353. The court below, it will be noted, completely ignored these authorities.

While these cases involved attempted displace-

ments of the general statutory priority of the United States in cases of insolvency, rather than attempts to displace its specific statutory tax lien, the same general principles should be applicable in determining what pre-existing rights in the tax debtor's property will prevent the lien of the United States from attaching to the whole property, and in ascertaining whether the state can create a precedence for rights which become specific and perfected in relation to the property subsequent to the time that the lien of the United States arises. See *Michigan* v. *United States*, 317 U. S. 338, 340-341; *United States* v. *Reese*, 131 F. 2d 466 (C.A. 7). See also *Propper* v. *Clark*, 337 U. S. 472, where, because the earlier appointment of a temporary receiver did not transfer title to him under local law, an intervening "freezing order" of the Federal Government was held to prevent the later passage of title to a permanent receiver, notwithstanding that under local law the permanent receiver's title might relate back to the time of the appointment of the temporary receiver.

California, of course, is at liberty to adopt a doctrine of relation back so that the lien of a judgment creditor is deemed to date from the time of attachment and to possess priority over all private claimants whose rights in the property arise after the attachment. But, as this Court's consistent line of authority demonstrates, California cannot use this fictional doctrine to give such a lien priority over a tax lien of the United States where the

creditor possesses no specific or perfected interest in the property at the time when the rights of the United States come into existence.

2. As the discussion above shows, the decision below conflicts, in principle, with the decisions of this Court in *New York* v. *Maclay*, 288 U. S. 290; *United States* v. *Texas*, 314 U. S. 480; *Michigan* v. *United States*, 317 U. S. 338; and *United States* v. *Waddill Co.*, 323 U. S. 353.

The decision below is squarely in conflict with the decision of the United States District Court for the Northern District of California in *United States* v. *R. F. Fisher*, decided September 7, 1948 (unreported). There, under circumstances which are identical with those of the present case, the tax lien of the United States with respect to property located in California was held to be paramount over that of a subsequent judgment creditor, notwithstanding that the judgment creditor had secured an attachment against the property prior to the time that the tax lien arose.

3. The question presented by this case is one of importance. In addition to the decision below, the same issue has been determined adversely to the United States in *Board of Sup'rs of La. State University* v. *Hart*, 210 La. 78, and in *United States* v. *Yates*, 204 S.W. 2d 399 (Tex. Civ. App.); cf. *United States* v. *R. F. Fisher*, N.D. Cal., *supra*.[2]

---

[2] Closely related cases are *MacKenzie* v. *United States*, 109 F. 2d 540 (C.A. 9); *United States* v. *Reese*, 131 F. 2d 466 (C.A. 7); *Miller* v. *Bank of America, N. T. & S. A.*, 166 F. 2d 415 (C.A. 9).

The question is a recurring one in the collection of the revenue which cannot be definitively settled in the absence of an authoritative decision of this Court.

CONCLUSION

This petition for writs of certiorari should be granted.

Respectfully submitted,

PHILIP B. PERLMAN,
Solicitor General.

FEBRUARY, 1950.

APPENDIX

1. Deering's California Code of Civil Procedure (1941 ed.):

§ 537. [When and actions in which attachment may issue.] The plaintiff, at the time of issuing the summons, or at any time afterward, may have the property of the defendant attached, as security for the satisfaction of any judgment that may be recovered, unless the defendant gives security to pay such judgment, as in this chapter provided, in the following cases:

* * * * *

§ 542b. [Duration of attachment on personal property.] An attachment or garnishment on personal property, whether heretofore levied or hereafter to be levied, shall, unless sooner released or discharged, cease to be of any force or effect and the property levied on be released from the operation of such attachment or garnishment, at the expiration of three years after the issuance of the writ of attachment under which said levy was made; and the property levied on shall be delivered to the defendant or his order or to his assignee or executor or administrator.

§ 550. [Satisfaction of judgment by sale of property, etc.] If judgment be recovered by the plaintiff, the sheriff, constable, or marshal must satisfy the same out of the property attached by him which has not been delivered to the defendant, or released because of a third party claim, or subjected to a prior exe-

cution or attachment, if it be sufficient for that purpose:

1. By paying to the plaintiff the proceeds of all sales of perishable property sold by him, or of any debts or credits collected by him, or so much as shall be necessary to satisfy the judgment;

2. If any balance remain due, and an execution shall have been issued on the judgment, he must sell under the execution so much of the property, real or personal, as may be necessary to satisfy the balance, if enough for that purpose remain in his hands. Notices of the sales must be given, and the sales conducted as in other cases of sales on execution.

Deering's California Code of Civil Procedure (1941 ed.), 1947 Pocket Supplement:

§ 542. [Manner in which property attached.] The sheriff, constable, or marshal, to whom the writ is directed and delivered, must, upon receipt of instructions in writing, signed by the plaintiff or his attorney of record, and containing a description of the property, and in the case of real property or growing crops the name of the record owner of the real property to be attached, or upon which the crops are growing, and a statement as to whether or not the real property is registered under the Land Title Law, an initiative act adopted by election November 3, 1914, execute the same without delay, and if the undertaking mentioned in Section 540 of this code be not given, as follows:

* * * * *

§ 542a. [Lien on realty: When effective: Duration and extension.] The lien of the attachment on real property attaches and becomes effective upon the recording of a copy of the writ, together with a description of the property attached, and a notice that it is attached with the county recorder of the county wherein said real property is situated; provided, however, that in the event that the sheriff, constable, or marshal does not complete the execution of said writ in the manner prescribed in Section 542 of this code within a period of 15 days next following said recording in the recorder's office then said lien shall cease at the expiration of said period of 15 days.

The attachment whether heretofore levied or hereafter to be levied shall be a lien upon all real property attached for a period of three years after the date of levy unless sooner released or discharged either as provided in this chapter, or by dismissal of the action, or by the recording with the recorder of an abstract of the judgment in the action. At the expiration of three years the lien shall cease and any proceeding or proceedings against the property under the attachment shall be barred; provided, that upon motion of a party to the action, made not less than five nor more than 60 days before the expiration of said period of three years, the court in which the action is pending may extend the time of said lien for a period not exceeding two years from the date on which the original lien would expire, and the lien shall be extended for the period specified in the order upon the record-

ing before the expiration of the existing lien, of a certified copy of the order with the recorder of the county in which the real property attached is situated. The lien may be extended from time to time in the manner herein prescribed.

§ 674. [Lien of judgment: Recording abstract: Duration of lien.] An abstract of the judgment or decree of any court of this State, including a judgment of any court sitting as a small claims court, or any court of record of the United States, the enforcement of which has not been stayed on appeal, certified by the clerk or justice of the court where such judgment or decree was rendered, may be recorded with the recorder of any county and from such recording the judgment or decree becomes a lien upon all the real property of the judgment debtor, not exempt from execution, in such county, owned by him at the time, or which he may afterwards and before the lien expires, acquire. Such lien continues for five years from the date of the entry of the judgment or decree unless the enforcement of the judgment or decree is stayed on appeal by the execution of a sufficient undertaking or the deposit in court of the requisite amount of money as provided in this code, or by the statutes of the United States, in which case the lien of the judgment or decree, and any lien or liability now existing or hereafter created by virtue of an attachment that has been issued and levied in the action, unless otherwise by statutes of the United States

provided, ceases, or upon an undertaking on release of attachment, or unless the judgment or decree is previously satisfied, or the lien otherwise discharged. * * *

2. Internal Revenue Code:

SEC. 3670. PROPERTY SUBJECT TO LIEN.

If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, penalty, additional amount, or addition to such tax, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person.

(26 U.S.C. 1946 ed., Sec. 3670.)

SEC. 3671. PERIOD OF LIEN.

Unless another date is specifically fixed by law, the lien shall arise at the time the assessment list was received by the collector and shall continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time.

(26 U.S.C. 1946 ed., Sec. 3671.)

SEC. 3672 [as amended by Section 401, Revenue Act of 1939, c. 247, 53 Stat. 862, and Section 505, Revenue Act of 1942, c. 619, 56 Stat. 798]. VALIDITY AGAINST MORTGAGEES, PLEDGEES, PURCHASERS, AND JUDGMENT CREDITORS.

(a) *Invalidity of Lien Without Notice.*—Such lien shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice thereof has been filed by the collector—

(1) *Under State or Territorial Laws.*—In the office in which the filing of such notice is authorized by the law of the State or Territory in which the property subject to the lien is situated, whenever the State or Territory has by law authorized the filing of such notice in an office within the State or Territory; or

(2) *With Clerk of District Court.*—In the office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated, whenever the State or Territory has not by law authorized the filing of such notice in an office within the State or Territory; or

(3) *With Clerk of District Court of the United States for the District of Columbia.*—In the office of the clerk of the District Court of the United States for the District of Columbia, if the property subject to the lien is situated in the District of Columbia.

* * * * *

(26 U.S.C. 1946 ed., Sec. 3672.)

☆ U. S. GOVERNMENT PRINTING OFFICE 1950 872630 4ᵒ⁸

In the Supreme Court of the United States

OCTOBER TERM, 1950

No. 10

THE UNITED STATES OF AMERICA, PETITIONER

v.

SECURITY TRUST AND SAVINGS BANK OF SAN DIEGO, EXECUTOR, ETC., ET AL.

No. 11

THE UNITED STATES OF AMERICA, PETITIONER

v.

SECURITY TRUST AND SAVINGS BANK OF SAN DIEGO, EXECUTOR, ETC., ET AL.

No. 12

THE UNITED STATES OF AMERICA, PETITIONER

v.

SECURITY TRUST AND SAVINGS BANK OF SAN DIEGO, EXECUTOR, ETC., ET AL.

No. 13

THE UNITED STATES OF AMERICA, PETITIONER

v.

SECURITY TRUST AND SAVINGS BANK OF SAN DIEGO, EXECUTOR, ETC., ET AL.

ON WRITS OF CERTIORARI TO THE DISTRICT COURT OF APPEAL, FOURTH APPELLATE DISTRICT, STATE OF CALIFORNIA

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the District Court of Appeal (R. 28-33) is reported at 93 Cal. App. 2d 608.

INDEX

	Page
Opinion below	1
Jurisdiction	2
Question presented	2
Statutes involved	2
Statement	2
Specification of error to be urged	6
Summary of argument	6
Argument:	
A tax lien of the United States is paramount to a subsequent judgment lien, even though the judgment creditor had secured an attachment against the property antedating the tax lien	10
A. Introductory: the nature and incidence of the federal tax lien	10
B. The federal tax lien statute was designed to supplement, and serves purposes comparable to, R.S. 3466, providing for the priority of debts due the United States where a debtor is insolvent, and the tax lien should attach to the same property interests belonging to a tax delinquent as are reached by that statute	16
C. A lien which is not specific or perfected will not prevent the priority of the United States, under R.S. 3466, from applying to the entire property of the debtor, no matter what the provisions of state law	25
D. The attaching creditor here did not have a specific, perfected lien when the federal tax lien came into existence, and his subsequent judgment lien cannot be given priority over the existing federal tax lien	35
Conclusion	48
Appendix	49

CITATIONS

Cases:

Adams v. *O'Malley*, 182 F. 2d 925	45
Anderson v. *Schloesser*, 153 Cal. 219	36, 39
Bagley v. *Ward*, 37 Cal. 121	39
Baltimore Shipbuilding Co. v. *Baltimore*, 195 U. S. 375	20
Balzano v. *Traeger*, 93 Cal. App. 640	36, 39
Beaston v. *Farmers' Bank*, 12 Pet. 402	18, 23

Cases—Continued

	Page
Board of Sup'rs of La. State University v. *Hart*, 210 La. 78	44
Boye v. *Boerner*, 38 Cal. App. 2d 567	38
Bramwell v. *U. S. Fidelity Co.*, 269 U. S. 483	23
Brent v. *Bank of Washington*, 10 Pet. 596	17, 18, 21
Brun v. *Evans*, 197 Cal. 439	38
Burfiend v. *Hamilton*, 20 Mont. 343	20
Burns v. *Peters*, 5 Cal. 2d 619	37
California Loan Etc. Co. v. *Weis*, 118 Cal. 489	20
Clark v. *Superior Court*, 37 Cal. App. 732	36
Conard v. *Atlantic Insurance Co.*, 1 Pet. 386	17, 18, 21, 28, 43
Detroit Bank v. *United States*, 317 U. S. 329	13, 14
Eaton's Appeal, 83 Pa. St. 152	21
Eaton v. *Queen*, 78 Cal. App. 2d 371	37
Field v. *United States*, 9 Pet. 182	23
Glass City Bank v. *United States*, 326 U. S. 265,	13, 16 20, 24, 46
Halstead v. *Halstead*, 72 Cal. App. 2d 832	36
Ham v. *Cunningham*, 50 Cal. 365	38, 39
Hefner v. *Northwestern Life Ins. Co.*, 123 U. S. 747	20
Hibernia Mortgage Co. v. *Greco*, 191 La. 658	20
Hunter v. *United States*, 5 Pet. 173	17
Illinois v. *Campbell*, 329 U. S. 362	8, 18, 21, 24, 26, 33-35, 40, 42, 46, 47
Illinois v. *United States*, 328 U. S. 8	23
Investment & Securities Co. v. *United States*, 140 F. 2d 894	15
Jones v. *Kemp*, 144 F. 2d 478	38
Kruse v. *Wilson*, 3 Cal. App. 91	37
Lakas v. *Archambault*, 38 Cal. App. 365	38
Licking v. *Hays Lumber Co.*, 146 Neb. 240	20
Loveland v. *Alvord Consol. Quartz Min. Co.*, 76 Cal. 562	36
MacKenzie v. *United States*, 109 F. 2d 540	15, 42, 43
Martinovich v. *Marsicano*, 150 Cal. 597	39
Metropolitan Life Ins. Co. v. *United States*, 107 F. 2d 311	13
Michigan v. *United States*, 317 U. S. 338	7, 13, 14, 21, 22, 25, 26, 42
Miller v. *Bank of America, N.T. & S.A.*, 166 F. 2d 415	11, 15
Minneapolis Thresh. Mach. Co. v. *Roberts County*, 34 S.D. 498	20
Myers v. *Mott*, 29 Cal. 359	38
New York v. *Maclay*, 288 U. S. 290	8, 18, 21, 24, 26, 29, 40, 42, 46, 47
N. Y. Terminal Co. v. *Gavs*, 204 N. Y. 512	20, 21, 28-30
Osterberg v. *Union Trust Co.*, 93 U. S. 424	20

Cases—Continued

	Page
Porter v. *Pico*, 55 Cal. 165	39
Price v. *United States*, 269 U. S. 492	17, 18, 23
Puissegur v. *Yarbrough*, 29 Cal. 2d 409	35, 40
Shambaugh v. *Scofield*, 132 F. 2d 345	38
Spokane County v. *United States*, 279 U. S. 80	17, 21
Syrett v. *Strickland*, 86 Cal. App. 623	36
Thelusson v. *Smith*, 2 Wheat. 396	8, 17, 21, 26, 27, 29, 40, 42, 43
Turner v. *Fidelity & Deposit Co.*, 187 Cal. 76	38
Underwood v. *United States*, 118 F. 2d 760	38
Union Cent. Life Ins. Co. v. *Black*, 67 Utah 268	20
United States v. *City of Greenville*, 118 F. 2d 963	13, 14, 42
United States v. *Emory*, 314 U. S. 423	23
United States v. *Fisher*, 2 Cranch 358	18, 47
United States v. *Hack*, 8 Pet. 271	17, 18
United States v. *Heffron*, 158 F. 2d 657, certiorari denied, 331 U. S. 831	38
United States v. *Hooe*, 3 Cranch 73	21
United States v. *Kaufman*, 267 U. S. 408	18
United States v. *Knott*, 298 U. S. 544	18
United States v. *Oklahoma*, 261 U. S. 253	17, 23
United States v. *Reese*, 131 F. 2d 466	22, 42, 45
United States v. *R. F. Fisher*, decided November 24, 1948	45
United States v. *Sampsell*, 153 F. 2d 731	45
United States v. *Snyder*, 149 U. S. 210	7, 13, 14, 24, 26, 42, 46
United States v. *Texas*, 314 U. S. 480	18, 21, 26, 28, 30-31, 42
United States v. *Waddill Co.*, 323 U. S. 353	18, 21, 24, 26, 31-33, 42
United States v. *Yates*, 204 S. W. 2d 399	44
Villermin v. *Republic Executive Committee, Etc.*, 195 La. 1022	20

Constitution and Statutes:

U. S. Constitution, Art. I, Sec. 8, Cl. 1	46
Act of March 3, 1797, c. 20, 1 Stat. 512, Sec. 5	17
Act of July 13, 1866, c. 184, 14 Stat. 98, Sec. 9	19
Act of March 4, 1913, c. 166, 37 Stat. 1016, as amended by the Act of February 26, 1925, c. 344, 43 Stat. 994, and Section 613 of the Revenue Act of 1928, c. 852, 45 Stat. 791	14
Internal Revenue Code:	
Sec. 3670 (26 U.S.C. 1946 ed., Sec. 3670)	7, 12, 13, 15, 16, 17, 19, 21, 22, 24, 25, 49
Sec. 3671 (26 U.S.C. 1946 ed., Sec. 3671)	13, 49
Sec. 3672 (26 U.S.C. 1946 ed., Sec. 3672)	11, 14, 15, 19, 21, 43, 49

Constitution and Statutes—Continued

	Page
Secs. 3690-3706 (26 U.S.C. 1946 ed., Secs. 3690-3706)	13, 47
Sec. 3697 (26 U.S.C. 1946 ed., Sec. 3697)	19
Sec. 3704 (26 U.S.C. 1946 ed., Sec. 3704)	19, 47
Revenue Act of 1939, c. 247, 53 Stat. 862	14, 49
Revenue Act of 1942, c. 619, 56 Stat. 798	14, 49
Revised Statutes:	
Sec. 3186	19
Sec. 3466 (31 U.S.C. 1946 ed., Sec. 191)	7, 8, 16, 17, 18, 21, 22, 23, 25, 41, 42, 50
Deering's California Code of Civil Procedure (1941):	
Sec. 537	3, 36, 51
Sec. 542	3, 51
Sec. 542 a	39, 52
Sec. 550	39, 53
Sec. 553	36
Secs. 554-555	38
Sec. 674	53
Secs. 1186-1187	40
Sec. 1206	40
Deering's Civil Code of California (1949), Sec. 2888	37
Miscellaneous:	
47 A.L.R. 378 (1927)	21
Kohlmeier, *Federal Tax Liens Under Revised Statutes, Section 3186*, (1935) 13 Taxes, Tax Magazine 191	19
Sarner, *Correlation of Priority and Lien Rights in the Collection of Federal Taxes*, (1947) 95 U. of Pa. L. Rev. 739, 755-759	23, 45

In the Supreme Court of the United States

OCTOBER TERM, 1950

No. 10

THE UNITED STATES OF AMERICA, PETITIONER

v.

SECURITY TRUST AND SAVINGS BANK OF SAN DIEGO, EXECUTOR, ETC., ET AL.

No. 11

THE UNITED STATES OF AMERICA, PETITIONER

v.

SECURITY TRUST AND SAVINGS BANK OF SAN DIEGO, EXECUTOR, ETC., ET AL.

No. 12

THE UNITED STATES OF AMERICA, PETITIONER

v.

SECURITY TRUST AND SAVINGS BANK OF SAN DIEGO, EXECUTOR, ETC., ET AL.

No. 13

THE UNITED STATES OF AMERICA, PETITIONER

v.

SECURITY TRUST AND SAVINGS BANK OF SAN DIEGO, EXECUTOR, ETC., ET AL.

ON WRITS OF CERTIORARI TO THE DISTRICT COURT OF APPEAL, FOURTH APPELLATE DISTRICT, STATE OF CALIFORNIA

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the District Court of Appeal (R. 28-33) is reported at 93 Cal. App. 2d 608.

JURISDICTION

The judgments of the District Court of Appeal were entered on September 17, 1949. (R. 28-33.) On November 14, 1949, the Supreme Court of California denied the petition of the United States for a hearing, Chief Justice Gibson having voted to grant the hearing. (R. 27.) Petitions for writs of certiorari were filed on February 8, 1950, and were granted on May 1, 1950 (R. 42-43). The jurisdiction of this Court is conferred by 28 U.S.C., Section 1257 (3).

QUESTION PRESENTED

The United States obtained and filed notice of federal tax liens. Thereafter, a private creditor, who had previously issued an attachment in connection with his suit against the tax debtor, secured a judgment lien against the tax debtor's property.

Did the court below err in deciding that the judgment lien of the private creditor ranked superior to the federal tax lien merely because he had obtained an attachment against the property prior to the time that the federal tax lien arose?

STATUTES INVOLVED

The applicable provisions of the statutes involved are set forth in the Appendix, *infra*, pp. 49-54.

STATEMENT

These cases, consolidated below, involve the relative priority of liens of the United States for unpaid taxes against property of the tax debtors,

George Styliano, and his wife Genell Styliano, as against a lien of a subsequent judgment creditor, Wilton M. Morrison.

The Stylianos owned four parcels of real property in San Diego County, California. Three of these parcels had been mortgaged, one to Robert M. Rewick and Mary Elizabeth Rewick; one to Robert M. DeWitt and Jessie R. DeWitt; and one to Ray C. Cavell and Myrtle M. Cavell. The fourth parcel had been sold and conveyed by the Stylianos to Alberta Winther and Margaret G. Young, and there was a balance owing to the Stylianos on the purchase price on that parcel of land. (R. 29.)

The Stylianos were also indebted to Wilton M. Morrison on an unsecured note. On October 17, 1946, Morrison brought an action against the Stylianos on this note in the Superior Court of San Diego County, California. In connection with this suit, he procured the issuance and levy of an attachment on the interests of the Stylianos in these four parcels of property, pursuant to Sections 537 and 542, California Code of Civil Procedure. (R. 3, 29.)

During the pendency of Morrison's action against the Stylianos, notices of federal tax liens against all the Stylianos' property were filed in the Office of the County Recorder, San Diego, California, on behalf of the Collector of Internal Revenue at Los Angeles, in the total amount of $10,142.04. These notices were filed on December 3,

1946, December 5, 1946, December 10, 1946, and January 22, 1948. The taxes for which these notices of lien were filed had been assessed by the Commissioner of Internal Revenue, and the assessments had been received in the office of the Collector of Internal Revenue. These taxes remained unpaid after notice and demand, and the notices of lien were filed in accordance with law. (R. 3-4, 16-17, 29.)

On April 24, 1947, Morrison, in the action on his note, recovered a judgment against the Stylianos in the amount of $78,938.55. On May 2, 1947, an abstract of this judgment was recorded in the office of the County Recorder, San Diego County. (R. 3, 29.)

In No. 10, Alberta Winther and Margaret G. Young brought an action to quiet title, the Stylianos, Morrison, and the United States of America being named as defendants. The plaintiffs paid $1,500 into court, representing the balance of the purchase price due the Stylianos, and prayed for a deed clear of all liens. In Nos. 11-13, the Rewicks, the DeWitts and the Cavells brought actions to foreclose their mortgages, the Stylianos, Morrison, and the United States of America being the defendants. All of these actions were brought in the Superior Court of San Diego County, California. (R. 29.)

In the Winther case, after trial, the court ordered that the money which had been paid into

court, after the deduction of certain expenses, be paid to Morrison in satisfaction *pro tanto* of his judgment lien. The court held that the United States had a lien on the balance of the fund which was inferior to that of Morrison. Morrison's lien, if superior to that of the United States, would exhaust the fund which had been paid into court. (R. 2-3, 11-13, 29.)

In the Rewick, DeWitt, and Cavell cases, the court ordered that the mortgaged property be sold and the proceeds applied as follows: First, to the payment of the respective mortgage judgments, plus costs; second, to the satisfaction of the Morrison judgment lien, *pro tanto;* third, any balance to be paid to the United States on its federal tax liens. (R. 2-3, 13-26, 29.)

The judgments in the Winther and DeWitt cases were entered on July 6, 1948. Judgments in the Rewick and Cavell cases were entered on August 23, 1948. On July 2, 1948, the United States filed a motion for a new trial in each case, the motions being denied on July 13, 1948. (R. 2, 5-6, 13-26.)

On July 27, 1948, the United States filed notices of appeal with the Supreme Court of California, the appeals being only from the portions of the judgments rendered in favor of Morrison and from the holding of the trial court that his lien was superior to the tax liens of the United States. (R. 6-10.) By order, the cases were consolidated on appeal. (R. 10.) An agreed statement on

appeal was filed on January 15, 1949, and a supplemental statement on appeal was filed on January 26, 1949. (R. 1-27.) Subsequently, the Supreme Court of California transferred the four cases to the District Court of Appeal, Fourth Appellate District. (R. 27.) The District Court of Appeal, in an opinion filed September 17, 1949, affirmed the judgments of the Superior Court, holding that the liens of the United States were inferior to the lien of Morrison. (R. 28-33.) A petition for hearing was filed by the United States in the Supreme Court of California and was denied on November 14, 1949, Chief Justice Gibson having voted to grant the hearing. (R. 27.) Subsequently, by order, the Security Trust and Savings Bank of San Diego, Executor of the Will of Wilton M. Morrison, was substituted as a party in Morrison's stead. (R. 34-39.)

SPECIFICATION OF ERROR TO BE URGED

The court below erred in holding that the lien of the judgment creditor took precedence over the earlier tax liens of the United States and that such precedence was required by the fact that he had secured a prior attachment against the property.

SUMMARY OF ARGUMENT

It is the Government's position that the tax lien of the United States is paramount to a prior attachment against the property, even though the attaching creditor subsequently obtains a judgment lien and even though state law, by a fictional

doctrine, conceives the judgment lien as relating back to the time of the attachment.

A. It is settled that the tax lien of the United States (Section 3670 of the Internal Revenue Code) is a specific lien at the time when it accrues, requires nothing further for its perfection, and, except as Congress has expressly provided, cannot be impaired or displaced by subsequent property interests, regardless of what may be true under state law with respect to other liens or property interests. *United States* v. *Snyder*, 149 U.S. 210; *Michigan* v. *United States*, 317 U. S. 338. It reaches "all property and rights to property, whether real or personal, belonging to" the tax delinquent. Even though a general creditor has secured an attachment against a debtor's property, such property, after the attachment, still belongs to the debtor and should be subject, in its entirety, to the federal tax lien.

B. The federal tax lien was designed to supplement, and serves purposes comparable to, R.S. 3466, providing for the priority of debts due the United States where a debtor is insolvent (cf. *Michigan* v. *United States*, 317 U.S. 338, 340), and in reaching property belonging to a delinquent the tax lien should include, at the very least, the same kind of property interests of a debtor which are required to satisfy the priority of the United States under R. S. 3466, in the event of insolvency. Both statutes are intended to secure the public

revenues, and are to be construed liberally to that end; exemptions or exceptions from their coverage must be limited, and state statutes creating special "lien" or like rights in a debtor's property should be carefully scrutinized to assure that the Government's right to have its priority or lien satisfied out of the debtor's property be not nullified. In the case of the federal lien, moreover, the persuasive analogy of state tax liens indicates that, at the very least, all inchoate and contingent encumbrances are subordinate to the tax lien, no matter how specific, definite, or perfected they may later become.

C. This Court has repeatedly held, in cases under R.S. 3466 or its predecessors, that a lien on a debtor's property, which is not yet specific or perfected, will not prevent the priority of the United States from including the entire property, and that its priority is not affected by the circumstance that this inchoate interest later ripens into a specific, perfected one. This is true even though state law regards the later interest as relating back to the earlier time when it was only inchoate. In particular, the priority of the United States is not affected by a prior judgment lien against the debtor's property. See, *e. g. Thelusson* v. *Smith*, 2 Wheat. 396, 425; *New York* v. *Maclay*, 288 U.S. 290; *Illinois* v. *Campbell*, 329 U.S. 362. Accordingly, in circumstances where the debtor's property is subject to the priority of the United

States despite the existence of an earlier, adverse interest, the same property should be subject to the tax lien of the United States notwithstanding such earlier interest.

D. It is clear that an attachment against a debtor's property, such as is here involved, would not have prevented the priority of the United States from subjecting the whole property to its claim. Similarly, it should not prevent the federal tax lien from applying to the entire property. Under California law, the attachment confers only a potential and contingent interest, and gives no possessory rights to the creditor. At the time of the attachment, no specific, perfected lien has been created and the property still belongs to the debtor. Only if the creditor is successful in ultimately securing a judgment, and proceeds to execute the judgment, does the attachment have any effect; then, it is only by a fictional doctrine which relates the judgment lien back to the time of the attachment that the state gives the judgment creditor preference over intervening interests in the property. However, since the lien of the United States attached here before the creditor had actually obtained any rights to the debtor's property, and at a time when he had only a potential and contingent interest by virtue of his existing attachment, the lien of the United States—which is to be determined at the time that it arises—must be held to be paramount. It cannot be displaced by the

subsequent judgment lien which was obtained. Even though the state, as it affects other creditors, relates the judgment lien back to the time of the original attachment to give it priority over such creditors, it cannot do so in derogation of the rights of the United States which were already in existence.

The supreme constitutional power of Congress to levy and collect taxes would be seriously hampered if the federal tax lien could not be effectively enforced immediately when the lien arises, and if the United States should have to await the outcome of what may be lengthy litigation between private litigants in a state court, merely because a plaintiff has commenced his action by attaching the property of a debtor who is also a tax delinquent.

ARGUMENT

A Tax Lien of the United States Is Paramount to a Subsequent Judgment Lien, even Though the Judgment Creditor Has Secured an Attachment Against the Property Antedating the Tax Lien

A. *Introductory:—the nature and incidence of the federal tax lien.*

The issue in this case concerns the relative priority to be accorded to liens of the United States for unpaid taxes as against the lien of a subsequent judgment creditor who, prior to the date when the liens of the United States became effective, had secured an attachment against the property in connection with the initiation of his

suit against the debtor to recover a claim. It is the position of the United States that, at the time when its liens came into existence, the creditor, by his prior attachment, did not possess a specific, perfected lien and did not carve out an interest in the property which would prevent the liens of the United States from attaching to the whole property, unaffected by the fact that the attachment had been made.[1] Consequently, any later interest in the property acquired by the private creditor, if his subsequent judgment lien be deemed to constitute an interest in the property, could not displace the existing senior liens of the

---

[1] The interests of the vendee in No. 10 and of the mortgagees in Nos. 11-13 arose prior to the time that the liens of the United States came into existence and prior to the time that the notices of the liens were filed. Accordingly, their interests were unaffected by the federal tax lien, under the express provisions of Section 3672(a), Internal Revenue Code (Appendix, *infra*, pp. 49-50). Since there is no question concerning the priority of those liens over that of the United States, and since the only issue concerns the relative priority of the United States and the attaching creditor, all references in this brief to "the debtor's property which is subject to the tax lien" should be understood as excluding those other interests which are conceded to have priority.

The creditor (Morrison) had obtained and recorded his judgment (in April and May 1947) prior to the time that notice of the fourth and last federal tax lien was filed on January 22, 1948, in the amount of $412.11, plus interest. (R. 3.) To this extent, the judgment lien is paramount, under the provisions of Section 3672 (a), Internal Revenue Code (*infra*, pp. 49-50), for the recording of the judgment automatically made it a lien on the debtor's real property, under California law (*infra*, pp. 53-54). See *Miller* v. *Bank of America, N.T. & S.A.*, 166 F. 2d 415, 417-418 (C.A. 9). The three other tax liens, which aggregate approximately $9,700, were filed before that time (in 1946) (see *supra*, pp. 3-4), and our contentions are limited to these.

United States. The courts below erred in deciding to the contrary.

A consideration of the nature of the lien of the United States for unpaid taxes, as contrasted with the purely contingent, inchoate interest obtained by a litigant in California who issues an attachment against the defendant's property when he commences his principal action (*infra*, pp. 35-40), compels the conclusion that the property still belongs to the debtor notwithstanding the attachment and that, consequently, a subsequent tax lien of the United States subjects the entire property to the tax claim. While California permits the attaching creditor, if he ultimately recovers a judgment in his principal action, to assert priority against some private interests in the property which arise after the time of his attachment (*infra*, pp. 39-40), such a preference cannot be created by the state in derogation of the interest of the United States which, pursuant to the supreme constitutional authority of Congress, has already been impressed on all property belonging to the tax debtor and which was in existence prior to the actual time that the judgment creditor acquired any substantial interest in the property.

Section 3670 of the Internal Revenue Code (Appendix, *infra*, p. 49), provides that if any person neglects or refuses to pay any tax after demand has been made, the amount of the tax shall be a lien in favor of the United States "upon all prop-

erty and rights to property, whether real or personal, *belonging to such person.*" (Italics added.) [2] Under Section 3671 of the Code (Appendix, *infra*, p. 49), the lien arises at the time the assessment list is received by the Collector, unless another date is fixed by law, and continues until the liability is satisfied or becomes unenforceable by lapse of time.

While the scope of the lien is general, applying as it does to all property belonging to the tax debtor, it is a specific lien at the time when it arises, requiring nothing further for its perfection. *United States* v. *Snyder*, 149 U. S. 210; *Glass City Bank* v. *United States*, 326 U. S. 265; *United States* v. *City of Greenville*, 118 F. 2d 963, 965 (C.A. 4); *Metropolitan Life Ins. Co.* v. *United States*, 107 F. 2d 311, 313 (C.A. 6). See also *Detroit Bank* v. *United States*, 317 U. S. 329, and *Michigan* v. *United States*, 317 U. S. 338, dealing with the comparable estate tax lien under Section 827 (a), Internal Revenue Code. After it comes into being, the tax lien may be enforced by seizure and sale of the property by the Collector pursuant to the provisions of Sections 3690-3706, Internal

[2] Section 3670 provides:

Property Subject to Lien.

If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, penalty, additional amount, or addition to such tax, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person.

Revenue Code, without the intervention of any judicial process.

The effect of the existence of the tax lien of the United States was aptly described in *United States* v. *City of Greenville*, 118 F. 2d 963, 965 (C.A. 4), where the court said:

> After the lien provided by the statute attaches, the property has in a sense two owners, the taxpayer and, to the extent of the lien, the United States. * * *

And, except as Congress has made specific provision to the contrary, the lien of the United States, once it arises, cannot be impaired or displaced by any subsequent interests in the property, regardless of what may be true under state law with respect to other liens or property interests. *United States* v. *Snyder, supra; Detroit Bank* v. *United States, supra; Michigan* v. *United States, supra.*

Thus, notwithstanding the existence of a state's recording statute broad enough to cover a federal lien, the lien of the United States was held not to be impaired by a subsequent sale to an innocent purchaser for value. *United States* v. *Snyder, supra.* The *Snyder* decision led to the enactment of provisions, now incorporated in Section 3672 of the Code (Appendix, *infra*, pp. 49-50),[3] to the

[3] These provisions find their origin in the Act of March 4, 1913, c. 166, 37 Stat. 1016, as amended by the Act of February 26, 1925, c. 344, 43 Stat. 994, and Section 613 of the Revenue Act of 1928, c. 852, 45 Stat. 791. Section 3672 of the Internal Revenue Code has been amended by Section 401 of the Revenue Act of 1939, c. 247, 53 Stat. 862, and by Section 505 of the Revenue Act of 1942, c. 619, 56 Stat. 798.

effect that the federal tax lien will not be valid against any "mortgagee, pledgee, purchaser, or judgment creditor" until notice of the lien has been filed by the Collector in the manner specified by that section. The exceptions created by Section 3672, however, are specific and do not afford protection to any person who does not come within the described categories. *Investment & Securities Co.* v. *United States*, 140 F. 2d 894, 896 (C.A. 9); *MacKenzie* v. *United States*, 109 F. 2d 540, 542 (C.A. 9); *Miller* v. *Bank of America, N.T. & S.A.*, 166 F. 2d 415, 417, 419 (C.A. 9). As we point out below (*infra*, p. 43, fn. 14), there is no doubt (and the courts below do not contest) that the creditor here (Morrison) would not become a "judgment creditor" and entitled to rely upon the provisions of Section 3672 until he obtained his actual judgment against the Stylianos; and since that event occurred after the federal tax lien had already attached, his status as a judgment creditor under Section 3672 was clearly junior to the Government's interest and that provision of the statute can have no application in this case. The real issue is whether, under Section 3670, Morrison's prior attachment gave him an interest and a standing superior to the federal tax lien.

B. *The federal tax lien statute was designed to supplement, and serves purposes comparable to, R.S. 3466, providing for the priority of debts due the United States where a debtor is insolvent, and the tax lien should attach to the same property interests belonging to a tax delinquent as are reached by that statute.*

The lien of the United States under Section 3670 extends to all property and rights to property "belonging" to the tax debtor. "Stronger language could hardly have been selected to reveal a purpose to assure the collection of taxes." *Glass City Bank* v. *United States*, 326 U. S. 265, 267. The statute is sweeping in its scope and, while it is not now necessary to determine the precise limits of its application, it is the contention of the United States that property against which an attachment exists, such as was made here, is, nevertheless, property "belonging" in its entirety to the tax debtor.[4]

1. Property "belonging" to the taxpayer, to which the lien provided by Section 3670 attaches, is, at the very least, broad enough in its concept to include the same kind of property interests of the debtor which are required to satisfy the priority of the United States under Section 3466 of the Revised Statutes (Appendix, *infra*, pp. 50-51).[5] A con-

---

[4] See fn. 1, *supra*, p. 11.

[5] Section 3466 provides:

> Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is in-

sideration of the priority statute is convincing that the tax lien, with respect to the property which it embraces, does not fall short of the scope of Section 3466.

Provisions securing priority for debts owing to the United States where the debtor is insolvent, now embodied in Section 3466 of the Revised Statutes, have been in force ever since Section 5 of the Act of March 3, 1797, c. 20, 1 Stat. 512, 515. For a history of these statutes see *Price* v. *United States*, 269 U. S. 492, 500-501; *Spokane County* v. *United States*, 279 U. S. 80, 87-93. While these statutory provisions have not, in express words, specified that the property out of which the debts of the United States are to be accorded priority must be property "belonging" to the debtor, as does Section 3670 of the Internal Revenue Code, Section 3466 of the Revised Statutes and its predecessors have always been applied in that manner. *Thelusson* v. *Smith*, 2 Wheat. 396, 425; *Conard* v. *Atlantic Insurance Co.*, 1 Pet. 386, 439-448; *Hunter* v. *United States*, 5 Pet. 173, 183; *United States* v. *Hack*, 8 Pet. 271, 274; *Brent* v. *Bank of Washington*, 10 Pet. 596, 610-612; *United States*

---

sufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed.

v. *Oklahoma*, 261 U. S. 253, 259; *United States* v. *Kaufman*, 267 U. S. 408, 414; *United States* v. *Knott*, 298 U. S. 544, 549-550; *New York* v. *Maclay*, 288 U. S. 290, 293-294; *United States* v. *Texas*, 314 U. S. 480, 488; *United States* v. *Waddill Co.*, 323 U. S. 353, 357-359; *Illinois* v. *Campbell*, 329 U. S. 362, 376. These cases have followed the rule that the priority of the United States under Section 3466 cannot be satisfied out of property in which the debtor has no interest, or of which he has been divested of substantial ownership prior to the time that the Federal Government's right of preference comes into existence. *Conard* v. *Atlantic Insurance Co.*, *supra*; *United States* v. *Hack*, *supra*; *Brent* v. *Bank of Washington*, *supra*; *United States* v. *Kaufman*, *supra*; *United States* v. *Knott*, *supra*. Conversely, the Government has the right to have its claim paid out of whatever property the debtor possesses at the time the priority attaches. In particular, this Court has consistently held that inchoate, contingent "liens" do not divest the debtor of his ownership so as to displace the Government's preference. See Point C, *infra*, pp. 25-35.

Section 3466 and its predecessors, while including taxes among the debts owing to the United States (*Price* v. *United States*, 269 U. S. 492), did not create a lien in favor of the Federal Government (*United States* v. *Fisher*, 2 Cranch 358, 390; *Beaston* v. *Farmers' Bank*, 12 Pet. 102, 132), and were limited to situations where the debtor was

insolvent. Such a lien was not established by Congress until the Act of July 13, 1866, c. 184, 14 Stat. 98, 107, Section 9, which, as amended, became embodied in Section 3186 of the Revised Statutes, and is now contained in Section 3670, Internal Revenue Code. See Kohlmeier, *Federal Tax Liens Under Revised Statutes—Section 3186,* (1935) 13 Taxes, the Tax Magazine 191.

The Act of July 13, 1866, in providing that the tax lien should attach to "all property and rights to property belonging" to the tax debtor, and in permitting the collector, by distraint, to sell "all right, title and interest" of the tax delinquent, in the property,* must have been intended to reach, at the least, the same kind of property interests of a tax debtor which had been held subject to the priority of the United States under the priority statutes. The tax lien, which was not limited to cases of insolvency and which required no judicial proceedings for its enforcement, gave the United States an additional and more certain method of enforcing the collection of delinquent taxes than it had previously possessed. It is most improbable that Congress, except for the limitations later imposed by the recording provisions incorporated in Section 3672 of the Internal Revenue Code, could have intended that less of the debtor's property should be subject to the newly created lien

---

*Sections 3697 (b) and 3704 (c), Internal Revenue Code, provide that, upon distraint, the sale conveys all the "right, title, and interest" of the tax delinquent in the property sold.

than was already embraced by the priority provisions. Indeed, it is difficult to envisage how the statute could have been drafted in broader terms to insure that it would at least apply to the same property interests. Cf. *Glass City Bank* v. *United States*, 326 U. S. 265, 267.

Moreover, the purpose and effect of the creation by Congress of a tax lien, in addition to the priority previously accorded, should be considered in the light of the reach of *state* tax liens and the scope of the property interest covered by them. Not only have many states provided that taxes assessed against real estate shall be a lien, paramount even to prior liens and encumbrances (see *Osterberg* v. *Union Trust Co.*, 93 U. S. 424; *Hefner* v. *Northwestern Life Ins. Co.*, 123 U. S. 747, 751; *Baltimore Shipbuilding Co.* v. *Baltimore*, 195 U. S. 375, 381), but other taxes as well have been made liens against the tax debtor's property, real and personal, entitled to displace earlier encumbrances and liens (*Burfiend* v. *Hamilton*, 20 Mont. 343; *California Loan Etc. Co.* v. *Weis*, 118 Cal. 489; *N. Y. Terminal Co.* v. *Gaus*, 204 N. Y. 512; *Minneapolis Thresh. Mach. Co.* v. *Roberts County*, 34 S.D. 498; *Union Cent. Life Ins. Co.* v. *Black*, 67 Utah 268; *Hibernia Mortgage Co.* v. *Greco*, 191 La. 658; *Villermin* v. *Republican Executive Committee, Etc.*, 195 La. 1022; *Licking* v. *Hays Lumber Co.*, 146 Neb. 240).

Indeed, state tax liens have been held entitled to this [illegible]ence even where the statute contains

no explicit command to that effect. Thus, in *N. Y. Terminal Co.* v. *Gaus, supra,* the state statute, similarly to Section 3670, merely provided that the state franchise tax should be a lien on all real and personal property until paid in full. Yet, the lien was held paramount to that of a prior mortgage.[7] See also the cases annotated in 47 A.L.R. 378 (1927).

It is not here necessary to determine whether the federal lien, like these state tax liens, displaces earlier liens or encumbrances which are specific and perfected.[8] The present point is that, in view

---

[7] In *Eaton's Appeal,* 83 Pa. St. 152, 154, it was held that the priority of a lien over prior encumbrances "necessarily follows from the provision that they shall continue a lien until fully paid and discharged."

[8] It will be observed that this Court has expressly reserved the question whether the federal lien under the estate tax has priority over a previously perfected lien (*Michigan* v. *United States,* 317 U. S. 338, 341), just as it has repeatedly reserved the same question in cases involving the priority of the United States under Section 3466, Revised Statutes (*Illinois* v. *Campbell,* 329 U. S. 362, 370; *United States* v. *Waddill Co.,* 323 U. S. 353, 355; *United States* v. *Texas,* 314 U. S. 480, 484-486; *New York* v. *Maclay,* 288 U. S. 290, 293-294; *Spokane County* v. *United States,* 279 U. S. 80, 95).

As the cited cases indicate, earlier decisions had drawn a distinction, for the purposes of the priority statute, between mortgage liens, and other kinds of liens. Thus, while in *Thelusson* v. *Smith,* 2 Wheat. 396, the statutory priority of the United States was held to take preference over the lien of a prior judgment creditor, the contrary result was reached where the debtor's property had been pledged or mortgaged as security. *United States* v. *Hooe,* 3 Cranch 73; *Conard* v. *Atlantic Insurance Co.,* 1 Pet. 386; *Brent* v. *Bank of Washington,* 10 Pet. 596. In *New York* v. *Maclay, supra* (p. 294) the question was reserved whether those decisions were applicable where a real estate mortgage is merely a lien and nothing else.

Regarding the lien under Section 3670, the problem of prior liens is mooted by Section 3672 with respect to mortgagees,

of the broad sweep which the state legislatures have been able to accord to liens for state taxes, Congress, in fashioning a federal lien pursuant to its supreme constitutional authority, and in doing so in very broad language, could not have intended that the lien of the United States should be so limited in its reach as not to apply to property subject to inchoate, contingent liens, and it could hardly have intended that the lien should encompass less of the debtor's property than that already embraced by the federal priority statutes.

2. This conclusion, that the tax lien imposed by Section 3670 of the Internal Revenue Code covers at least the same property as Section 3466 of the Revised Statutes, is further fortified by a review of the comparable purposes served by the latter statute, and the spirit in which this Court has uniformly applied it. The Court has already noted the analogy between the two Acts, and the similarity of the property interests of the debtor covered by each. *Michigan* v. *United States*, 317 U. S. 338, 340-341. This same similarity was the basis of decision in *United States* v. *Reese*, 131 F. 2d 466 (C.A. 7), where the federal tax lien was held superior to the inchoate tax lien of a state (see *infra*, p. 45). See also, Sarner, *Correlation of Priority and Lien Rights in the Collection of*

---

pledgees, purchasers or judgment creditors since, when their interests arise before the tax lien, there will have been no filing of notice of the tax lien and their interests could not be displaced. Such is the situation here with respect to the mortgagees and the vendee. See fn. 1, *supra*, p. 11.

Federal Taxes, (1947) 95 U. of Pa. L. Rev. 739, 755-759.

R. S. 3466 was enacted to "secure adequate public revenue to sustain the public burdens", and it is therefore "to be construed liberally", and so as to promote the public good. *Price* v. *United States*, 269 U. S. 492, 500; *Bramwell* v. *U. S. Fidelity Co.*, 269 U. S. 483, 487; *United States* v. *Emory*, 314 U. S. 423, 426. The statutory terms upon which the Government's right depends—such as "debts due to the United States"—are not to be read narrowly or technically. *Price* v. *United States*, *supra*, at 500 (holding a tax owing to the Federal Government within the Act). On the other hand, persons seeking exemption from the broad coverage of the Act bear a heavy burden (*Beaston* v. *Farmers' Bank*, 12 Pet. 102, 134), and "only the plainest inconsistency would warrant our finding an implied exception", based upon other federal statutes, to the "operation of so clear a command as that of § 3466". *United States* v. *Emory*, *supra*, at 433; *Illinois* v. *United States*, 328 U. S. 8, 12. As for state action, it is settled that the "priority given the United States cannot be impaired or superseded by state law" (*United States* v. *Oklahoma*, 261 U. S. 253, 260), and the federal scheme is independent of state recording and priority provisions, as well as unaffected by state statutes creating (by relation back, or otherwise) vested property interests which are not that in reality. *Field* v. *United States*, 9

Pet. 182, 201; *United States* v. *Waddill Co.*, 323 U. S. 353, 357; *Illinois* v. *Campbell*, 329 U. S. 362, 371, 375. Nullification of the federal priority by too easy acceptance of such state recording acts or expanded "lien" laws is to be avoided. *Illinois* v. *Campbell, supra*, at 375, 376. All these principles have combined to impel generous construction of the scope of the property of the debtor out of which the Government's preference is to be satisfied, and, by the same token, a strict view of acts alleged to sever the owner-debtor from his property and thus to defeat the Government's claim. See *New York* v. *Maclay*, 288 U. S. 290, and the other cases discussed in Point C, *infra*, pp. 25-35.

The purpose of Section 3670 is obviously the same as that of its companion:—to protect the federal revenues and to advance their collection. *Glass City Bank* v. *United States*, 326 U. S. 265, 267. The reasons which have caused this Court, since its beginning, to read R.S. 3466 liberally in aid of that end, and to limit exceptions from its coverage, apply at least equally to the tax lien statute. There is the same need for a broad reading of the tax-debtor's "property and rights to property" to which the lien attaches, and adequate warrant for applying criteria similar to those long employed under the earlier act. And since the tax lien statute, like the priority provision, stands apart from, and superior to, state legislation (*United States* v. *Snyder*, 149 U. S. 210, 214;

Michigan v. *United States*, 317 U. S. 338, 340), there is like justification for scrutinizing state statutes creating third-party property interests in the debtor's property to make sure that the interest is specific, perfected, definite, and real.

We submit, accordingly, that where a third party's interest in the debtor's property is of such a nature as not to prevent the priority of the United States from applying to the whole property under Section 3466, a similar interest will not prevent the same property from being considered as "belonging" to the debtor within the reach of Section 3670 or to shield any part of the property from the federal tax lien. Consequently, since, as we shall show (Points C and D, *infra*, pp. 25-47), the lien of the attaching creditor here would not have defeated the priority of the United States under Section 3466, Revised Statutes, it should not prevent the entire property from being impressed with the lien of the United States under Section 3670, Internal Revenue Code.

C. *A lien which is not specific or perfected will not prevent the priority of the United States, under R.S. 3466, from applying to the entire property of the debtor, no matter what the provisions of state law.*

Considering the decisions under Section 3466, it is crystal clear that an unspecific, inchoate interest like that of the attaching creditor here would not have carved out an interest in the property

which would have affected the priority of the United States.

At the outset, it should be noted that the decisions have been uniform in holding that the determination of what kind of an adverse interest in the debtor's property will avoid either the preference or lien of the United States is a federal question, to be determined by the federal courts; the manner in which the adverse interest is viewed by local law is not controlling. *United States* v. *Snyder*, 149 U. S. 210, 214; *United States* v. *Waddill Co.*, 323 U. S. 353, 357; *Illinois* v. *Campbell*, 329 U. S. 362, 371. The cases are also uniform in holding that if the adverse interest is not sufficient to prevent the priority or lien of the United States from being effective at the time when they arise, neither may thereafter be disturbed. This is so even though the contrary may be true under state law with respect to the rights of creditors other than the United States. *Thelusson* v. *Smith*, 2 Wheat. 396, 425; *United States* v. *Snyder*, *supra*, pp. 213-215; *New York* v. *Maclay*, 288 U. S. 290, 292-293; *United States* v. *Texas*, 314 U. S. 480, 484-488; *Michigan* v. *United States*, 317 U. S. 338, 340; *United States* v. *Waddill Co.*, *supra*, pp. 356-357; *Illinois* v. *Campbell*, *supra*, pp. 374-375.

Thelusson v. *Smith*, 2 Wheat. 396, is conclusive that the attachment here would not have affected the priority of the United States; if anything, it makes the present case an *a fortiori* situation.

There, Thelusson had instituted suit in a state court against the debtor and, by agreement of the parties, the matter was referred to arbitrators. They made an award in Thelusson's favor and a judgment *nisi* was entered. Thereafter, the debtor made an assignment for the benefit of his creditors at a time when he was indebted to the United States and insolvent. Later, in Thelusson's suit, exceptions which had been filed were overruled and a final judgment was entered. This Court, on the express assumption that Thelusson's judgment lien was effective to bind the debtor's real estate at the time of the judgment *nisi*, and, therefore, that the judgment lien antedated the time when the preference rights of the United States arose, held that the United States was entitled to priority out of the property in controversy. While it was recognized that the United States could have asserted no rights if the property had already been divested from the debtor, it was held that a judgment lien had no such effect. The Court, speaking through Justice Washington, stated (p. 426):

> A judgment gives to the judgment-creditor a lien on the debtor's lands, and a preference over all subsequent judgment-creditors. But the act of congress defeats this preference, in favor of the United States, in the cases specified * * *.

It is of interest to note the fuller explanation of the *Thelusson* case given by Justice Story, who

had participated in it, in *Conard* v. *Atlantic Insurance Co.*, 1 Pet. 386, 444:

> The fact, that a judgment-creditor has a lien, does not place him in a better situation, as a creditor, over the general funds of the debtor in the hands of the assignees. If he possess such a lien, he must enforce it in the manner prescribed by law; and if he does, that may so far affect the interest of the assignees actually subjected to such liens. But it gives him no rights to the fund, until he has perfected his lien, according to the course of the law. Until that period, he has merely a power over the property, and not an actual interest in it. * * * The real ground of the decision [in the *Thelusson* case], was, that the judgment-creditor had never perfected his title by any execution and levy on the Sedgely estate; that he had acquired no title to the proceeds, as his property, and that if the proceeds were to be deemed general funds of the debtor, the priority of the United States to payment had attached against all other creditors; and that a mere potential lien on land did not carry a legal title to the proceeds of a sale, made under an adverse execution. This is the manner in which this case has been understood by the judges who concurred in the decision; and it is obvious, that it established no such proposition, as that a specific and perfected lien can be displaced by the mere priority of the United States; since that priority is not of itself equivalent to a lien.

See also *United States* v. *Texas*, 314 U. S. 480, 485.

We need scarcely elaborate on the analogy between the present situation and the *Thelusson* case. If a judgment lien, which is specific in amount, does not constitute a sufficient appropriation of the debtor's property to remove it from his estate which is available to pay the United States as a general creditor entitled to priority, an attachment lien before judgment, which is uncertain not only in amount, but even as to whether it will ever ripen into a judgment lien, and which is subject to all the infirmities described later (Point D, *infra*, pp. 35-40) cannot constitute the creation of an interest in the debtor's property which will prevent a specific, perfected lien of the United States from applying to the entire property.

The later decisions of this Court confirm the intrinsic soundness of *Thelusson* v. *Smith, supra.* In *New York* v. *Maclay,* 288 U. S. 290, the state had a claim for franchise taxes due for years prior to the time that the priority of the United States came into existence by the appointment of a receiver for the delinquent, but which were not assessed or liquidated until after that date. By statute, the franchise tax was a lien, even prior to assessment, on all the real and personal property of the taxpayer, so that subsequent purchasers or mortgagees would take subject to the lien, even though the amount was not then determined. After assessment, it was entitled to priority over prior mortgages (288 U. S. 290, 292-293). See also *N. Y. Terminal Co.* v. *Gaus,* 204 N. Y. 512, discussed

supra, pp. 20-21. Reserving the question whether the United States would have been entitled to priority if these had been specific and perfected liens, prior to the time when the United States became entitled to its preference, the Court held that, while they were liens, they were (p. 292) "not so perfected or specific as to change the rule of distribution." The opinion stated (pp. 293-294):

> To hold that a lien has progressed to such a point as to be a warning to mortgagees and purchasers of a contingent liability, like a notice of *lis pendens*, is far from holding that while the liability is unliquidated and unknown the lien thus created is perfect and specific. By the terms of the hypothesis it is nothing of the kind. If the state were to stand upon the warning and omit to ascertain the debt, it would never be able to sell anything, for it would not know how much to sell. Against mortgagees and purchasers a lien perfected afterwards may take effect by relation as of the date of the inchoate lien through which mortgagees and purchasers became chargeable with notice. The doctrine of relation will not divest the United States of the preference that accrued when receivers were appointed.
>
> * * * the statutory preference must prevail against the lien of a tax not presently enforcible, but serving merely as a *caveat* of a more perfect lien to come.

While the state franchise taxes had been assessed and liquidated after the appointment of the receiver, the Court observed that the state (p. 292)

"* * * if not preferred at the time of the appointment, did not win itself a preference by anything done therafter."

In *United States* v. *Texas*, 314 U. S. 480, there were competing claims of the United States and Texas for unpaid gasoline taxes. The state asserted its claim to priority on the ground that, by statute, its unpaid gasoline taxes were made a first and prior lien on all property of the gasoline distributor used in his business. This, it was asserted, gave the state a specific, perfected lien which would over-ride the priority of the United States.

It was held that the state lien was not specific or perfected, and the priority of the United States was sustained. It was pointed out (p. 487) that the property subject to the lien was neither certain nor constant, and that "a more important consideration is that the amount of the claim secured by the lien is unliquidated and uncertain." Accordingly, the opinion concluded (p. 488):

> Consequently, while it was clearly intended * * * to create a lien in favor of the State, we must conclude that of necessity it was nothing more than an inchoate and general lien. Certainly it did not of its own force divest the taxpayer of either title or possession. It could not become specific until the exact amount of the taxes due had been determined, and it could not be enforced without the assistance of the courts. Like the tax lien in *New York* v. *Maclay, supra*, it served "merely as a *caveat* of a more perfect lien to come."

Again in *United States v. Waddill Co.*, 323 U. S. 353, the preference of the United States was upheld against a landlord's lien for rent due prior to the time that the right of priority arose. The landlord there had obtained and levied a distress warrant shortly after the right of priority of the United States had attached. The statutes of Virginia authorized a landlord to levy distress on any goods of the lessee found on the premises or removed from the premises within thirty days, and also provided that the goods of the lessee could not be removed from the premises by any lienor or purchaser, nor taken under legal process, except by paying the landlord any rent in arrears and securing him against rent to become due for six months. As interpreted by the Virginia courts, the landlord has a lien for such rent which is fixed and specific, is not inchoate, and exists independently of the remedies for enforcing it, such as distress or attachment. The lien, moreover, is regarded as relating back to the beginning of the term.

While regarding these interpretations as binding propositions of state law, this Court, nevertheless, gave the matter its own independent appraisal to determine whether, by giving effect to the state doctrine, the existing priority of the United States would, in fact, be superseded by a subsequent private interest. In upholding the priority of the United States, it was pointed out that, until the landlord took steps to satisfy his

lien, it was not possible to determine what goods would actually be required for that purpose, since the amount of rent due might have been uncertain, and since the value of all the goods might have exceeded the rent to which the landlord was entitled, and since it was not even certain whether the landlord would ever enforce his lien at all; accordingly, it was concluded that the mere existence of the landlord's lien prior to the time when the United States became entitled to its preference (p. 357) "gave the landlord only a general power over unspecified property rather than an actual interest in a definitive portion or portions thereof." The opinion also stated (pp. 358-359):

> Nor was the statutory lien perfected as a matter of actual fact, regardless of how complete it may have been as a matter of state law. The tenant was divested of neither title nor possession by the silent existence of the landlord's statutory lien on the date of the assignment. Only after the lien was actually asserted and an attachment or a distraint leveled, enabling the landlord to satisfy his claim out of the seized goods, could it be argued that such goods severed themselves from the general and free assets of the tenant from which the claims of the United States were entitled to priority of payment. * * *

Illinois v. *Campbell*, 329 U. S. 362, involved the priority of the United States against a lien asserted by the state for its unemployment taxes, the lien, by state statute, being impressed on all the property used by the employer in his trade

or business. The opinion recognized (pp. 373-375) that, since the state had filed notice of its lien in accordance with law prior to the time that the United States became entitled to its preference, the identity of the lienor and the amount of the lien was fixed. However, the lien was held not to be sufficiently perfected to prevent the priority of the United States from taking precedence over the state's lien, since the exact property which would be used to satisfy the state's lien could not be known at the time when the United States became entitled to its preference. The opinion stated (pp. 374-375):

> It has never been sufficient to show merely a general lien, effective to protect the lienor against others than the Government, but contingently on taking subsequent steps either for giving public notice of the lien or for enforcing it. *Conard* v. *Atlantic Ins. Co.*, 1 Pet. 386, 444; *United States* v. *Waddill Co.*, *supra*. The federal priority is not destroyed by state recording acts any more than by state statutes creating or otherwise affecting liens, if the lien as recorded or otherwise executed does not have the required degree of specificity and perfection. Under the decisions the test is not, and cannot be, simply whether by his taking further steps the lienor's rights will be enforced against others than the Government.
>
> The long-established rule requires that the lien must be definite, and not merely ascertainable in the future by taking further steps, in at least three respects as of the crucial

time. These are: (1) the identity of the lienor, *United States* v. *Knott*, 298 U. S. 544, 549-551; (2) the amount of the lien, *United States* v. *Waddill Co.*, 323 U. S. at 357-358; and (3) the property to which it attaches, *United States* v. *Waddill Co., supra; United States* v. *Texas, supra; New York* v. *Maclay, supra.* It is not enough that the lienor has power to bring these elements, or any of them, down from broad generality to the earth of specific identity.

D. *The attaching creditor here did not have a specific, perfected lien when the federal tax lien came into existence, and his subsequent judgment lien cannot be given priority over the existing federal tax lien.*

Turning to a consideration of the nature of an attaching creditor's lien in California, it must be concluded that, at the time of the attachment, no definite interest is obtained which would prevent the entire property from being available to satisfy the priority of the United States and that the entire property must be regarded as still "belonging" to the debtor and subject to the tax liens of the United States.

1. In its recent decision in *Puissegur* v. *Yarbrough*, 29 Cal. 2d 409, 412, the California Supreme Court characterized the rights of an attaching creditor in the following terms: "The attaching creditor obtains only a potential right or a contingent lien * * *." This statement will be found to be aptly descriptive upon a more detailed exam-

ination of the interest acquired by an attaching creditor. Section 537, Deering's California Code of Civil Procedure (Appendix, *infra*, p. 51), specifies the kind of actions upon the commencement of which the plaintiff may have the defendant's property attached, "as security for the satisfaction of any judgment that may be recovered * * *." The attaching creditor's rights in the property at the time of attachment are purely potential and contingent, for the only purpose of the attachment is to *secure* the payment of a judgment which *may* be recovered in the event of the successful prosecution of his suit. Such is the language of the statute, and the California courts have repeatedly embodied this hypothesis in their decisions. *Anderson* v. *Schloesser*, 153 Cal. 219; *Halstead* v. *Halstead*, 72 Cal. App. 2d 832; *Balzano* v. *Traeger*, 93 Cal. App. 640. If the attaching creditor does not succeed in his principal action, the attachment falls and the successful defendant is immediately free to dispose of the property as he sees fit. *Loveland* v. *Alvord Consol. Quartz Min. Co.*, 76 Cal. 562; *Syrett* v. *Strickland*, 86 Cal. App. 623; *Clark* v. *Superior Court*, 37 Cal. App. 732; Section 553, Deering's California Code of Civil Procedure (1941).

The contingent nature of the rights of the attaching creditor is also apparent from the self-evident fact that, not only is the successful outcome of the primary litigation in doubt until

ultimately determined, but the amount that the attaching creditor may recover, even if successful, remains uncertain until a final, enforceable judgment is obtained. Under California law, the amount for which the attaching creditor will be able to enforce a judgment lien cannot and need not be ascertained at the time when the attachment is levied. *Eaton* v. *Queen*, 78 Cal. App. 2d 571. Moreover, there is no statutory provision requiring valuation of the property attached, and the attachment may reach all the property of the defendant which is not specifically exempt. Consequently, at the time of the attachment, it cannot be ascertained what enforceable rights, if any, will ultimately be secured by the attaching creditor against any specific property.

The attaching creditor does not obtain any possessory rights in the property. Where, as is the case here, the property attached is real property, the defendant continues in possession; until the attaching creditor has been successful in obtaining judgment, he has no power to claim any rights to the property. *Kruse* v. *Wilson*, 3 Cal. App. 91. The attachment lien, moreover, does not transfer title to the property attached. Section 2888, Deering's Civil Code of California (1949). The attaching creditor is not considered a bona fide purchaser for value and, accordingly, he has no claim to preference over a prior, unrecorded real estate mortgage of which he had no knowledge. *Burns* v.

Peters, 5 Cal. 2d 619; *Boye* v. *Boerner*, 38 Cal. App. 2d 567.[9]

The purely potential and contingent nature of the attaching creditor's rights is further evidenced by the fact that, if the defendant dies prior to execution on a judgment, the previously existing attachment lien fails and the creditor is relegated to whatever general rights he may have against the decedent's estate. *Turner* v. *Fidelity & Deposit Co.*, 187 Cal. 76, 84; *Ham* v. *Cunningham*, 50 Cal. 365; *Myers* v. *Mott*, 29 Cal. 359. The attaching creditor's rights may even be displaced if the debtor establishes a homestead prior to actual judgment. *Lakas* v. *Archambault*, 38 Cal. App. 365.[10]

The defendant, moreover, may secure a discharge of the attachment before judgment upon giving security in the manner specified. Sections 554-555, Deering's California Code of Civil Procedure (1941). The attachment is also discharged if, after losing in the lower court, the defendant should appeal and file a *supersedeas* bond. *Brun* v. *Evans*, 197 Cal. 439. The lien of attachment against real estate, moreover, expires at the end of three years, unless renewed in the manner pro-

---

[9] The tax liens of the United States, on the contrary, take precedence over a prior, unrecorded mortgage. *Underwood* v. *United States*, 118 F. 2d 760 (C.A. 5).

[10] The federal tax lien, however, would even extend to a prior homestead created by state law. *United States* v. *Heffron*, 158 F. 2d 657 (C.A. 9), certiorari denied, 331 U. S. 831; *Jones* v. *Kemp*, 144 F. 2d 478 (C.A. 10); *Shambaugh* v. *Scofield*, 132 F. 2d 345 (C.A. 5).

vided for. Section 542a, Deering's California Code of Civil Procedure (1941), 1947 Pocket Supplement (Appendix, *infra*, pp. 52-53).

The point of time at which the plaintiff who has proceeded by attachment first acquires enforceable rights against the property is after the recovery of a final judgment against the defendant. The property attached may then be sold in execution of the judgment, and the attachment has the effect of giving priority to the judgment lien as against private interests in the property which came into existence after the effective date of the attachment. *Bagley* v. *Ward*, 37 Cal. 121; *Anderson* v. *Schloesser*, 153 Cal. 219; *Ham* v. *Cunningham*, 50 Cal. 365; *Balzano* v. *Traeger*, 93 Cal. App. 640; Section 550, Deering's California Code of Civil Procedure (Appendix, *infra*, p. 53). This priority over intervening interests in the property is effectuated by doctrine which conceives that the deed on a sale under the judgment "relates back to and takes effect from the levy of the attachment * * *." *Martinovich* v. *Marsicano*, 150 Cal. 597, 600. See also *Porter* v. *Pico*, 55 Cal. 165, 171, 174. The doctrine is sometimes spoken of as one where the attachment lien merges into the judgment lien, except that it maintains vitality to give priority to the judgment lien from the date of the attachment. *Bagley* v. *Ward*, 37 Cal. 121, 131.

The priority over intervening interests which is accorded to the judgment lien is, however, not perfect in every respect. For example, a lien of

a mechanic, materialman, etc., filed after an attachment has been secured will, notwithstanding the earlier attachment, take precedence over an ultimate judgment lien to the extent that materials, improvements, or labor was furnished prior to the date of attachment. Sections 1186-1187, Deering's California Code of Civil Procedure. Also wage claims against the defendant for services rendered within ninety days prior to the attachment are, up to a specific amount, given express priority over the attachment lien. Section 1206, Deering's California Code of Civil Procedure.

2. In view of the kind of interest secured at the time of attachment, it scarcely seems necessary to specify the various ways in which the creditor's attachment lien carved out even less from the debtor's property than was true in *Thelusson* v. *Smith*, 2 Wheat. 396, and in the other cases discussed in Point C, *supra*, pp. 25-35. Where "the state court itself characterizes the lien as inchoate, this characterization is practically conclusive", though the opposite labeling is always subject to reexamination. *Illinois* v. *Campbell*, 329 U. S. 362, 371. And the highest state court has called the attachment lien a "potential right or a contingent lien" (*Puissegur* v. *Yarbrough*, 29 Cal. 2d 409, 412), through which, it is clear, the attaching creditor obtains, at most, a "*caveat* of a more perfect lien to come" (*New York* v. *Maclay*,

288 U. S. 290, 294). The attachment existing at the time when the liens of the United States arose did not at all diminish the property "belonging" to the tax debtor.[11] And, since the liens of the United States were impressed on the property and notices of the liens were properly filed prior to the earliest time that the attaching creditor could have secured any enforceable rights against the property (i.e. before judgment), and prior to the time that he could have severed it from the debtor's general estate, it follows that the liens of the United States were paramount the moment they came into existence.[12]

California, of course, is at liberty to adopt a fictional doctrine which relates the judgment lien back to the time of the attachment, thus entitling it to priority over intervening private interests created in the defendant's property, although even here, as was previously noted, some intervening private interests are excepted. But the state, in the absence of Congressional consent, cannot utilize this fiction so that a later judgment lien will operate to displace an earlier tax lien which has already been impressed on all the debtor's prop-

---

[11] It is indisputable that if the taxpayers (the Stylianos) had become insolvent and had made a voluntary assignment or committed an act of bankruptcy after the attachment had been issued, the United States' claim for taxes would be paramount, under R.S. 3466 which would be directly applicable in that case, and the attaching creditor's rights would be wholly subordinate.

[12] See footnote 1, *supra*, p. 11.

erty. As this Court pointed out in *Michigan* v. *United States*, 317 U. S. 338, 340:

> Hence it is not debatable that a tax lien imposed by a law of Congress, as we have held the present lien is imposed, cannot, without the consent of Congress, be displaced by later liens imposed by authority of any state law or judicial decision. * * *

Accord: *United States* v. *Snyder*, 149 U. S. 210; *United States* v. *City of Greenville*, 118 F. 2d 963 (C.A. 4); *United States* v. *Reese*, 131 F. 2d 466 (C.A. 7); *MacKenzie* v. *United States*, 109 F. 2d 540 (C.A. 9). Such, too, have been the consistent decisions under Section 3466 of the Revised Statutes holding that, once the right of preference of the United States exists, it may not be impaired by any subsequent interests, even though state law doctrines antedate them for the purpose of affording priority over earlier, private rights in the property. *Thelusson* v. *Smith*, 2 Wheat. 396, 425; *New York* v. *Maclay*, 288 U. S. 290, 292-293 [13]; *United States* v. *Texas*, 314 U. S. 480, 484-488; *United States* v. *Waddill Co.*, 323 U. S. 353, 357; *Illinois* v. *Campbell*, 329 U. S. 362, 371.

---

[13] In the *Maclay* case, Mr. Justice Cardozo said, for the Court p. 293:

> Against mortgagees and purchasers a lien perfected afterwards may take effect by relation as of the date of the inchoate lien through which mortgagees and purchasers became chargeable with notice. The doctrine of relation will not divest the United States of the preference that accrued when receivers were appointed.

(See *supra*, pp. 29-31.)

Accordingly, the fact that the attaching creditor here secured a judgment lien after the time that the specific, perfected tax lien of the United States had attached to the property, cannot serve to displace the tax lien, regardless of what preference California, because of the earlier attachment, may accord the judgment lien over other local creditors.[14]

---

[14] It is plain that the attaching creditor can derive no comfort from the exceptions contained in Section 3672 of the Internal Revenue Code, for until his judgment was secured and entered he did not become a "judgment creditor" within the coverage of that provision. Except for that filed on January 22, 1948 (see footnote 1, *supra*, p. 11), the requisite notices of the federal liens were all filed prior to the time that he obtained his judgment. *Supra*, pp. 3-4. In precisely these circumstances, *MacKenzie v. United States*, 109 F. 2d 540, 542 (C.A. 9) held that a California attaching creditor was not a "judgment creditor" under Section 3672, and not entitled to rely on that portion of the statute. This decision was clearly correct. Section 3672 refers only to mortgagees, pledgees, purchasers, and judgment creditors who are in truth such before notice of the federal lien is filed; it does not open the door to those who stand at some earlier stage of the journey to those goals. If the doctrine of relation back were carried to these lengths, any state would be free to nullify the entire structure of the federal tax lien simply by indefinitely expanding the carefully limited exceptions made by Congress in Section 3672. Congress, however, clearly desired to protect existing mortgagees, pledgees, purchasers, and judgment creditors, and not potential or possible ones. Moreover, it is significant that the creditor here had never taken any affirmative action to enforce his judgment lien before the time that the property was subjected to the jurisdiction of the Superior Court when the mortgagees in Nos. 11-13 instituted proceedings to foreclose their mortgages and when the vendee in No. 10 instituted an action to quiet title. (R. 2-3, 29.) At that time, as was true in *Thelusson v. Smith*, 2 Wheat. 396, the judgment creditor here had "merely a power over the property" and never did acquire "an actual interest in it". *Conard v. Atlantic Insurance Co.*, 1 Pet. 386, 443. See also *supra*, pp. 14-15.

3. The infirmity in the contrary reasoning of the California District Court of Appeal is manifest.[15] It noted, quite correctly, that the lien of the United States could be impressed on only such rights as the tax debtor had in the property at the time when the tax lien came into being. It was quite wrong in believing, however, that, by virtue of the existing attachment, the creditor had already carved out an existing interest and that the property belonging to the tax delinquent had been correspondingly decreased. From the discussion at pp. 35-42, *supra*, it is clear that this is not so. Indeed, as the District Court of Appeal noted (R. 30), it is only by the California doctrine of relation back that the attachment derives any priority. As we have already observed, such a doctrine cannot be used to defeat a lien of the United States which is already in existence before the creditor obtains any specific, determinable rights to the property, and the District Court of Appeal was plainly wrong (R. 33) in believing that this fictional doctrine of state law was conclusive in determining what earlier rights were possessed by the United States. The same fallacious reasoning, characterized by reliance on local doctrines of relation back, was employed by the courts in *Board of Sup'rs of La. State University* v. *Hart*, 210 La. 78, and in *United States* v. *Yates*, 204 S.W.

[15] The Supreme Court of California did not render an opinion in denying the motion of the United States for a hearing. (R. 27.)

2d 399 (Tex. Civ. App.). These decisions, too, must be regarded as incorrect.

A decision bearing on the precise issue of this case is that of the United States District Court, Northern District of California, in *United States* v. *R. F. Fisher,* decided November 24, 1948 (unreported). There, under circumstances which are not distinguishable from the present case, the tax lien of the United States on property located in California was held to be paramount over that of a subsequent judgment creditor, notwithstanding that the judgment creditor had secured an attachment against the property prior to the time that the tax lien arose. And in the closely analogous case of *United States* v. *Reese,* 131 F. 2d 466, the Court of Appeals for the Seventh Circuit held the federal tax lien superior to an Illinois lien for state taxes which were not assessed until after the federal lien had attached—despite the provisions of Illinois law relating the state tax lien, after assessment, back to a date prior to the federal lien.[16]

4. Even if the answer to the issue presented by this case were not so firmly founded on authority,

[16] The holding in the *Reese* case was questioned in *United States* v. *Sampsell,* 153 F. 2d 731, 735 (C.A. 9) and in *Adams* v. *O'Malley,* 182 F. 2d 925 (C.A. 8) on the ground that the Seventh Circuit had disregarded the fact that bankruptcy existed in the *Reese* case, and that the Bankruptcy Act provides its own exclusive system of priorities. Actually, as the record discloses, the *Reese* case involved proceedings by the United States and the State of Illinois to enforce their respective tax liens, and, while *Reese* had been adjudicated a bankrupt in earlier proceedings, the property against which

the position of the United States would appear to offer the correct solution because of the practical considerations involved. The necessity of insuring prompt and certain collection of debts due to the United States from tax delinquents needs no elaboration; it is a necessary adjunct of the supreme authority of Congress under Article I, Section 8, Clause 1 of the Constitution. *United States* v. *Snyder*, 149 U. S. 210, 214; *New York* v. *Maclay*, 288 U. S. 290, 291-292; *Glass City Bank* v. *United States*, 326 U. S. 265, 267. See *supra*, pp. 22-25. This purpose would assuredly be hampered in a serious manner if the decision below were correct. Thus, if the plaintiff creditor attaches whatever property of the defendant that can be found, the difficulty of enforcing a subsequent tax lien of the United States becomes self-evident. Cf. *Illinois* v. *Campbell*, 329 U. S. 362, 376. The United States would have to await what might prove to be lengthy litigation in the state courts before the rights of the private parties become finally settled. It would not be practical, before that time, to enforce the federal lien, for no one could know what rights might subsequently be con-

---

the liens were asserted was not within the jurisdiction of a bankruptcy court and no question involving priorities in bankruptcy was presented. See Sarner, *supra*, pp. 22-3, 95 U. of Pa. Rev. 739, 757, fn. 107. The reference to *Reese* as a bankrupt and to the administration of his estate in the District Court (131 F. 2d 466, 467), seems to have misled the courts in the *Sampsell* and *Adams* cases. Moreover, while we disagree with those decisions, it will be noted that neither the Eighth nor the Ninth Circuits suggested that the discussion in the *Reese* opinion would be erroneous absent the supposed bankruptcy situation.

firmed in the plaintiff, or what particular property of the defendant he might finally select for the purpose of satisfying his ultimate judgment lien, if he should be successful in securing one. If the judgment lien is to be permitted to relate back to the attachment to give it priority, it would be next to impossible in the interval to determine what "right, title, and interest" (Section 3704 (c), Internal Revenue Code) the tax delinquent possesses in any particular property attached, and the lien of the United States could not be effectively enforced by distraint under Sections 3690-3706 until the litigation ends and the creditor's judgment lien is actually executed. We believe however, that if the United States proceeds to enforce its lien by distraint as soon as it arises, it should not be hampered in selling all "right, title, and interest" of the tax delinquent merely because the attaching creditor might recover a judgment at some future date.

There is no particular hardship on a creditor, who is still a general creditor, if he should be held to obtain no advantage over the tax lien of the United States merely because he has commenced an action by attaching the debtor's property. But if there be any hardship, it "is the necessary consequence of the supremacy of the laws of the United States on all subjects to which the legislative power of congress extends." *United States* v. *Fisher*, 2 Cranch 358, 396. Accord: *New York* v. *Maclay*, 288 U. S. 290, 292. If the supreme

power of the United States is to be relaxed in these circumstances "Congress alone should make such a change, if it should be made at all." *Illinois* v. *Campbell*, 329 U. S. 362, 376.

CONCLUSION

The judgment below should be reversed and the liens of the United States, except that for which notice was filed on January 22, 1948, should be decreed to be paramount to that of the attaching creditor.

Respectfully submitted,

PHILIP B. PERLMAN,
Solicitor General.
THERON LAMAR CAUDLE,
Assistant Attorney General.
ELLIS N. SLACK,
HELEN GOODNER,
HILBERT P. ZARKY,
Special Assistants to the Attorney General.

SEPTEMBER 1950.

APPENDIX

1. Internal Revenue Code:

SEC. 3670. PROPERTY SUBJECT TO LIEN.

If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, penalty, additional amount, or addition to such tax, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person.

(26 U.S.C. 1946 ed., Sec. 3670.)

SEC. 3671. PERIOD OF LIEN.

Unless another date is specifically fixed by law, the lien shall arise at the time the assessment list was received by the collector and shall continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time.

(26 U.S.C. 1946 ed., Sec. 3671.)

SEC. 3672 [as amended by Section 401, Revenue Act of 1939, c. 247, 53 Stat. 862, and Section 505, Revenue Act of 1942, c. 619, 56 Stat. 798]. VALIDITY AGAINST MORTGAGEES, PLEDGEES, PURCHASERS, AND JUDGMENT CREDITORS.

(a) *Invalidity of Lien Without Notice.*—Such lien shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice thereof has been filed by the collector—

(1) *Under State or Territorial Laws.*—In the office in which the filing of such notice is authorized by the law of the State or Territory in which the property subject to the lien is situated, whenever the State or Territory has by law authorized the filing of such notice in an office within the State or Territory; or

(2) *With Clerk of District Court.*—In the office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated, whenever the State or Territory has not by law authorized the filing of such notice in an office within the State or Territory; or

(3) *With Clerk of District Court of the United States for the District of Columbia.*—In the office of the clerk of the District Court of the United States for the District of Columbia, if the property subject to the lien is situated in the District of Columbia.

* * * * *

(26 U.S.C. 1946 ed., Sec. 3672.)

2. Revised Statutes:

SEC. 3466. Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof,

or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed. [31 U. S. C. 1946 ed., Sec. 191.]

3. Deering's California Code of Civil Procedure (1941 ed.):

§ 537. [When and actions in which attachment may issue.] The plaintiff, at the time of issuing the summons, or at any time afterward, may have the property of the defendant attached, as security for the satisfaction of any judgment that may be recovered, unless the defendant gives security to pay such judgment, as in this chapter provided, in the following cases:

* * * * *

§ 542. [Pocket Supplement (1947)] [Manner in which property attached.] The sheriff, constable, or marshal, to whom the writ is directed and delivered, must, upon receipt of instructions in writing, signed by the plaintiff or his attorney of record, and containing a description of the property, and in the case of real property or growing crops the name of the record owner of the real property to be attached, or upon which the crops are growing, and a statement as to whether or not the real property is registered under the Land Title Law, an initiative act adopted by election November 3, 1914, execute the same without delay, and if the undertaking mentioned in Section 540 of this code be not given, as follows:

* * * * *

§ 542a. [Pocket Supplement (1947)] [Lien on realty: When effective: Duration and extension.] The lien of the attachment on real property attaches and becomes effective upon the recording of a copy of the writ, together with a description of the property attached, and a notice that it is attached with the county recorder of the county wherein said real property is situated; provided, however, that in the event that the sheriff, constable, or marshal does not complete the execution of said writ in the manner prescribed in Section 542 of this code within a period of 15 days next following said recording in the recorder's office then said lien shall cease at the expiration of said period of 15 days.

The attachment whether heretofore levied or hereafter to be levied shall be a lien upon all real property attached for a period of three years after the date of levy unless sooner released or discharged either as provided in this chapter, or by dismissal of the action, or by the recording with the recorder of an abstract of the judgment in the action. At the expiration of three years the lien shall cease and any proceeding or proceedings against the property under the attachment shall be barred; provided, that upon motion of a party to the action, made not less than five nor more than 60 days before the expiration of said period of three years, the court in which the action is pending may extend the time of said lien for a period not exceeding two years from the date on which the original lien would expire, and the lien shall be extended for the

period specified in the order upon the recording before the expiration of the existing lien, of a certified copy of the order with the recorder of the county in which the real property attached is situated. The lien may be extended from time to time in the manner herein prescribed.

* * * * *

§ 550. [Satisfaction of judgment by sale of property, etc.] If judgment be recovered by the plaintiff, the sheriff, constable, or marshal must satisfy the same out of the property attached by him which has not been delivered to the defendant, or released because of a third party claim, or subjected to a prior execution or attachment, if it be sufficient for that purpose:

1. By paying to the plaintiff the proceeds of all sales of perishable property sold by him, or of any debts or credits collected by him, or so much as shall be necessary to satisfy the judgment;

2. If any balance remain due, and an execution shall have been issued on the judgment, he must sell under the execution so much of the property, real or personal, as may be necessary to satisfy the balance, if enough for that purpose remain in his hands. Notices of the sales must be given, and the sales conducted as in other cases of sales on execution.

* * * * *

§ 674. [Pocket Supplement (1947)] [Lien of judgment: Recording abstract: Duration of

lien.] An abstract of the judgment or decree of any court of this State, including a judgment of any court sitting as a small claims court, or any court of record of the United States, the enforcement of which has not been stayed on appeal, certified by the clerk or justice of the court where such judgment or decree was rendered, may be recorded with the recorder of any county and from such recording the judgment or decree becomes a lien upon all the real property of the judgment debtor, not exempt from execution, in such county, owned by him at the time, or which he may afterwards and before the lien expires, acquire. Such lien continues for five years from the date of the entry of the judgment or decree unless the enforcement of the judgment or decree is stayed on appeal by the execution of a sufficient undertaking or the deposit in court of the requisite amount of money as provided in this code, or by the statutes of the United States, in which case the lien of the judgment or decree, and any lien or liability now existing or hereafter created by virtue of an attachment that has been issued and levied in the action, unless otherwise by statutes of the United States provided, ceases, or upon an undertaking on release of attachment, or unless the judgment or decree is previously satisfied, or the lien otherwise discharged. * * *

☆ U. S. GOVERNMENT PRINTING OFFICE 1980 897709 83